


PHED Committee #4
July 21, 2008

MEMORANDUM

July 17, 2008

TO: Planning, Housing, and Economic Development Committee
FROM: Jeff Zyontz,  Legislative Attorney
SUBJECT: Zoning Text Amendment 08-11, Standards – Residential Zones

This worksession will be an opportunity for the Committee to review Zoning Text Amendment (ZTA) 08-11 and to direct staff toward issues of concern for an additional worksession.

Background

ZTA 08-11, sponsored by Councilmembers Berliner, Andrews, Elrich, and Trachtenberg, was introduced on May 6, 2008. ZTA 08-11 would amend the Zoning Ordinance to:

- lower the maximum height for certain lots in the R-200 zone;
- reduce the maximum building coverage for certain lots in certain one-family residential zones;
- amend provisions concerning an established building line by specifying the buildings to be included, the buildings to be excluded, and an alternative method to determine the setback required; and
- require regulations to implement the provisions for any sloping lot.

A lot in the R-200 zone that is smaller than 40,000 square feet would be subject to a lower building height limit if the lot was recorded before 1996 or in a subdivision that created 5 or fewer lots recorded after 1995. Maximum building height limits would be related to the size of the lot.

ZTA 08-11 would reduce the maximum building coverage standard in the R-200, R-150, R-90, R-60, and R-40 zones if the lot was recorded before 1996 or in a subdivision that created 5 or fewer lots recorded after 1995. The maximum building coverage would be related to the size of the lot. As estimated by the Planning Staff, ZTA 08-11 would reduce the allowable building

coverage on 123,401 lots; building coverage on 62,166 of those lots would be reduced by more than 5 percent of the lot area. The map on page 3 shows the locations of the affected zones.

From the property owner's perspective, a reduction in the percentage of lot area by 5 percent would be a 20 percent reduction from the currently allowable building coverage in the R-200 zone and a 14 percent reduction in the R-60 zone.¹

Any lot created by a subdivision of 6 or more lots recorded after 1995 and any lot with a building permit application filed before the date of the ZTA's adoption would not be affected by ZTA 08-11. Under ZTA 08-11, if an existing home exceeds the new standards and is demolished in the future, the owner may rebuild a building of the same height and building coverage as the demolished building.

Currently, the Zoning Ordinance requires a new house in an existing neighborhood to conform to the established building line, even if the established building line is farther from the street than the setback required by the zone. ZTA 08-11 would amend the established building line provisions of the Ordinance to clarify the lots to be excluded from calculating the line and to allow the setback line to be established by the houses on abutting properties.

On any sloping lot, stories in addition to the number permitted in the zone are permitted on the downhill side of any building erected on the lot. This provision of the Ordinance does not define 2 critical terms: 1) the degree of slope necessary to invoke this provision of the Ordinance; and 2) which side of a lot is the downhill side. ZTA 08-11 would require the Department of Permitting Services to adopt regulations to implement this provision of the Ordinance.

Councilmember Berliner has stated the problem with the current Ordinance as follows:

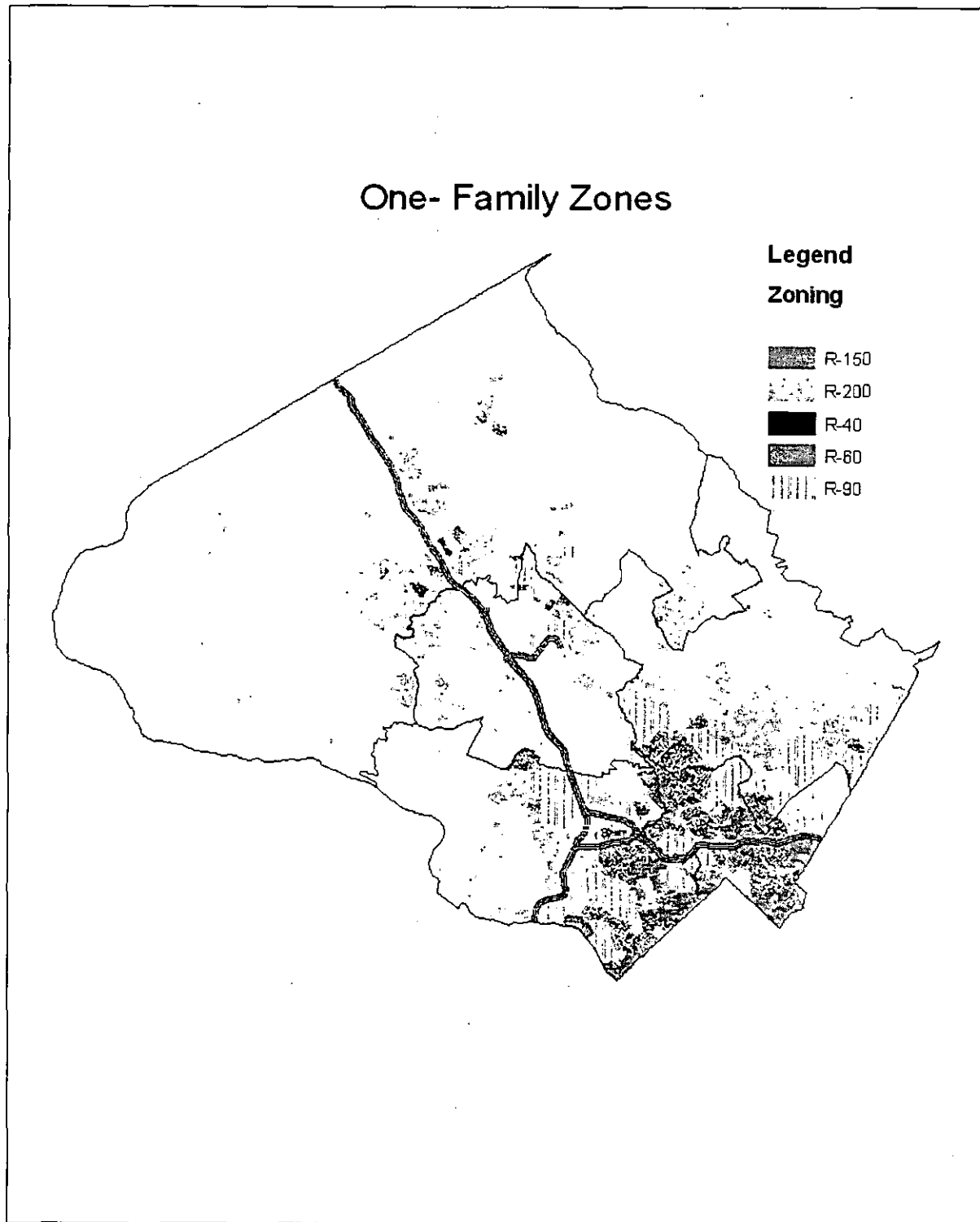
...[The building] lot coverage ratio was not a problem for many years since tastes dictated smaller homes with trees and a yard. Today, homes are being built to the maximum [building] coverage allowed. This has resulted in homes being built that loom over their neighbors, sometimes depriving neighbors of sunlight and privacy, creating more impermeable surfaces resulting in stormwater issues, and stark changes to the character of neighborhoods.

Thus, the fundamental challenge is, and has been, reconciling the desires and rights of new homeowners with the larger community of which they will become a part.

Since ZTA 08-11 was introduced, the Infill Development Task reached an "Agreement in Principle" that recommends amendments (© pages 18-19). Councilmember Berliner supported

¹ Some 1,197 lots in the R-90 zone are larger than 15,000 square feet and less than 20,000 square feet. Another 928 lots in the R-60 zone are greater than 20,000 square feet. ZTA 08-11 would reduce the allowable building coverage for all of these lots by 42 percent; these lots are currently allowed 35 percent coverage but would be allowed 20 percent coverage under ZTA 08-11.

the Agreement in Principle and amendments to ZTA 08-11 that would implement those principles. (© pages 20- 25 – drafted by staff).



Planning Staff Recommendation

The Planning Staff supported ZTA 08-11 with minor editorial changes to the established building line and the sloping lots provisions. Planning Staff did not recommend any changes to the building coverage limits or the grandfathering provisions of ZTA 08-11 as introduced.

Planning Board Recommendation

The Planning Board agreed that there is a need to address site design and compatibility issues in smaller lot zones; however, the Board was split (2-2) on supporting ZTA 08-11. In particular, some Board members thought that existing houses should have the ability to rebuild under current development standards. Board members who did not endorse ZTA 08-11 thought that there are too many unanswered questions concerning the impact of the legislation. The Board members in support of ZTA 08-11 believed that the ZTA would improve the compatibility of infill structures in many existing small lot neighborhoods.

Executive Comments

Staff has been informed that the Executive supports the concepts reflected in ZTA 08-11 and the Agreement in Principle reached by the Infill Development Task Force. The Executive also believes that some particular problems raised in the public hearing warrant the Council's attention; amendments to the ZTA before its adoption may be in order. The Executive will support the Council's deliberation with appropriate staff.

Staff Comments

The Council, as an institution, has previously addressed infill development. Staff has provided a very brief summary of the actions taken; additional materials are in an attachment. There are 3 issues addressed by ZTA 08-11: 1) established building lines; 2) sloping lots; and 3) limiting building coverage.

What efforts regarding infill development preceded ZTA 08-11?

There were no limits on building lot coverage in one-family residential zones until 1954. In 1954, the Council limited building coverage by the lot's zoning classification. The R-60 zone was limited to 35 percent building coverage, the R-90 zone was limited to 30 percent building coverage, and the R-200 zone was limited to 25 percent building coverage. The amendment in 1954 exempted parcels or lots created before 1954 from the coverage limits.

In August 1997 ZTA 97019 was introduced to limit the building envelope for one-family zones by creating floor area ratio (FAR) limits and to reduce allowable building heights from 35 to 32 feet in the R-60 and R-90 zones. The Council formed a Mansionization Working Group to review ZTA 97019. On June 23, 1998 the Working Group recommended amendments to impose building coverage limits on pre-1954 lots and parcels. The Working Group recommended further study of FAR limits and did not reach agreement on changing height limits. The Council

agreed with the Working Group's recommendation and adopted ZTA 97019 with amendments to remove FAR and height limits.

In 2003 ZTA 03-27 was introduced to revise the method of calculating building height and to reduce allowable building heights. On October 12, 2005 the Council adopted ZTA 03-27 with amendments; the adopted ZTA changed the means of calculating building height.

On February 13, 2007 the Office of Legislative Oversight (OLO) completed a report titled, *Residential Infill Construction: A Review of County Laws, Regulations, and Practices*. The OLO report recommended that the Council "discuss and decide whether the existing set of County laws and regulations governing infill construction reflect the Council's current preferences for development standards and permit issuance in the R-60 and R-90 zones."

Should the Zoning Ordinance include definitions of a "new building" and an "addition" to existing building to clarify the scope of the established building line provision?

ZTA 08-11 would clarify that the established building line provisions apply only to new buildings. A new building is any construction that is not an addition or alteration. It includes any existing building if less than 50 percent of the existing exterior walls are left in place. If more than 50 percent of the exterior walls are left in place, the Department of Permitting Service (DPS) would classify the construction as an addition. The amount of floor area left in place is not considered when DPS distinguishes between a new building and an addition to an existing building. The distinction between a new building and an addition to a building is only found in a DPS interpretation.² This interpretation has motivated the creativity of architects to keep the walls in place and demolish everything else.³ When the retained walls were found to be termite damaged and demolished in the course of an alternation, an alteration became new construction.

Staff recommends adding a definition in the Zoning Ordinance of a new building in contrast to an addition to a building.

What changes should be made to the criteria for setting an established building line?

Some neighborhoods have developed with greater setbacks than required by the zone. When new homes are built in these neighborhoods, it is required to build no closer to the street than the established building line. ZTA 08-11 would allow a builder the option of using the more traditional approach to determining an established building line (determining which building must be included and which building must be excluded) or determining the line by the 2 neighboring properties. This latter alternative is much easier to administer and would create rational-looking building setbacks. *Staff recommends replacing all of the text defining the*

² Interpretations were developed under DPS's own initiative. The February 13, 2007 OLO report noted the lack of any written procedures for the adoption of interpretations. The Council was not formally consulted on any of the interpretations posted on the DPS web site.

³ The OLO report found 1,181 "teardowns" between July 2001 and November 2006. In the same period, there were 8,991 additions. The majority of teardowns and a substantial number of additions took place in Bethesda.

inclusions and exclusions for determining the established building line and instead requiring the 2 neighboring properties to establish a building line.

Some builders go to a lot of effort to come within the definition of an alteration to avoid the consequences of meeting the established building line provisions. Councilmember Berliner's recommended an amendment to ZTA 08-11 would also allow a new building to be built wherever any existing house existed if the house meets the setback required by the zone. This alternative would be welcomed by new builders but would also diminish the effect of the established building line provisions on new development.

Should the sloping lot provision in the Zoning Ordinance be modified to require executive regulations?

The sloping lot provision allows additional stories in a building if the stories are located on the downhill side of a sloping lot. DPS estimates that this provision is applied about 12 times a year. At one time, this provision required the lot to slope at the rate of 10 percent. Since the slope percentage was removed by a ZTA, DPS has interpreted this provision on a case by basis. DPS has not issued a written interpretation of this provision. If ZTA 08-11 is adopted as introduced, DPS indicated that it would not change its current practice until new regulations are adopted. The comfort level with the status-quo may lead to a considerable delay in the regulations. *Staff recommends amending ZTA 08-11 to require the adoption of a regulation within a year.*

When is a neighborhood established such that it should be considered infill development?

ZTA 08-11 suggests that a subdivision that is currently 12 years old is established. The Adequate Public Facilities approval of all preliminary plans approved January 1, 1996 expired 12 years from the date of approval. If the Council selects a trigger date further back in time, fewer lots would be subject to the requirements of ZTA 08-11. There were major revisions to zoning in 1958 and 1978; either of those dates could be used to define an established neighborhood, if the Committee wants an alternative date.

Staff recommends using the date in ZTA 08-11 as introduced.

When does a subdivision become large enough to establish its own character?

ZTA 08-11 suggests that a subdivision with 6 or more lots establishes its own character; a subdivision smaller than that should match the character of the established neighborhood. Councilmember Berliner recommended an amendment to apply the limitation of ZTA 08-11 only to resubdivisions of 5 or fewer lots. This would make sure that the limits of ZTA 08-11 would apply to infill situations and not to subdivisions in green fields.

In the R-60 zone, a 6-lot subdivision would require almost an acre of land; in the R-200 zone, 6 lots would require just under 3 acres. These are large areas in comparison to the lot size required by the zone, and these subdivisions tend to create their own characters.

As introduced, ZTA 08-11 would use **subdivisions** of 5 units or less as a dividing line for lots subject to the new building coverage limits. Many subdivisions are located in green fields. Such subdivisions do not affect established communities. Resubdivisions, as the name implies, are applications on property that were already a recorded lot. Using a resubdivision as a criterion instead of a subdivision would have the effect of focusing the building coverage limits on established communities.

Inside the beltway there are 3,712 properties that have the potential to **resubdivide** to increase the allowable number of building lots; only 157 properties, including many large properties, have never been through the subdivision process and have the potential for subdividing. Large properties that yield more than 5 dwelling units would not be subject to ZTA 08-11 in any event. Using resubdivisions instead of subdivisions as the criterion for limiting building coverage would have virtually no effect inside the beltway.

Councilmember Berliner and staff recommend regulating subdivisions of 5 lots or less as proposed in ZTA 08-11 as introduced, but applying the ZTA 08-11 standards only to resubdivisions.

Are the height limits proposed in ZTA 08-11 reasonable?

The R-200 zone is the only zone that would have a lower building height limit under ZTA 08-11. Lots in this zone are currently allowed a building height of 50 feet. Building heights in the R-200 zone would be limited by the size of the lot. ZTA 08-11 would apply the current height limits in the R-90 and R-60 (35 feet to the high point of the roof or 30 feet to the mean height between the eaves and the top of the roof) to lots less than 15,000 square feet in area. Lots between 15,000 and 25,000 square feet in area would be allowed buildings 35 feet high; lots between 25,000 and 40,000 square feet would be allowed building heights of 40 feet.

Are limits on building coverage the best means of regulating infill development?

Building coverage is not a measure that cures all of the problems attributed to infill development. Building coverage is one element of a lot's impervious surface. ZTA 08-11 does not limit other elements of impervious surfaces such as paved surfaces.⁴ Reducing building coverage does not alone reduce stormwater run-off.

Building coverage is a two-dimensional measure of bulk. Reduced building coverage mandates more of a sense of openness on the ground level. It is not a measure that limits the heights of new buildings or the proximities of those heights to neighboring buildings. If one-story houses produced a sense of overcrowding with current building coverage limits, then limiting building coverage would be a perfect solution to that problem.

Municipalities in the County are using FAR limits in addition to height and setback standards to prevent new construction from looming over pre-existing neighbors. In its simplest

⁴ Rockville's draft Zoning Ordinance Rewrite proposes to limit impervious surfaces of residential lots.

terms, floor area is a combined measure of the building coverage multiplied by the number of stories. It addresses more of the complexities of bulk than just building coverage.

The Infill Development Task Force considered, but rejected, using FARs as a means of addressing infill development. Planning Staff indicated that the complications of measuring floor area were a major reason for this decision. FAR limits were also considered but not recommended for adoption by the Mansionization Working Group in 1997. The Infill Development Task Force rejected using FAR as a standard after extensive discussion. DPS also opposed using FAR due to the complications of administration.

If the Committee agrees with Garrett Park, the Village of Chevy Chase, and the draft Rockville Zoning Ordinance Rewrite, staff should be directed to develop FAR limits.

Should ZTA 08-11 change the definition of building coverage for one-family zones?

The zoning ordinance defines building coverage as “the area of a lot that is occupied by the main and accessory buildings, including covered decks, porches, and steps.” ZTA 08-11 would exclude porches, chimneys, and bay windows from the measurement of building coverage. The Infill Development Task Force believed that these building elements improve the design of a building and help break up its mass. *Staff recommends a consistent definition of building coverage; either ZTA 08-11 should be amended or the building coverage definition should be amended.*

Are the building coverage limits in ZTA 08-11 for lots over 20,000 square feet reasonable?

The current maximum building coverage for the R-200 zone is 25 percent of the lot area. ZTA 08-11 would reduce that maximum building coverage to 20 percent. There are 11,562 lots in the R-200 zone that are at least 20,000 square feet in size and another 3,011 lots of this size in the R-90 and R-60 zones. These are large lots by current standards. Testimony questioned the wisdom of limiting development on large lots where the sense of crowding neighbors with overly large houses on small lots is absent. Most special exceptions are on lots that are larger than 20,000 square feet. In the absence of an amendment, ZTA 08-11 would limit the building coverage of future special exceptions and amendments to current special exceptions.

Councilmember Berliner recommends excluding lots larger than 20,000 square feet from the building coverage limit; staff agrees.

Will some lots in the R-200 zone be allowed an increase in building coverage under ZTA 08-11?

ZTA 08-11 varies the allowable building coverage by lot size. The range of building lot coverage allowed would range from 30 percent to 20 percent. The R-200 zone currently has a limit of 25 percent building coverage. Lots in the R-200 zone that are less than 11,000 square feet in area would be allowed **more** building coverage under ZTA 08-11. There are 13,316 lots of less than 11,000 square feet in the R-200 zone that would be allowed more building coverage.

What happens if a lot abuts large houses?

As introduced, ZTA 08-11 would limit the building coverage on the house in between 2 large houses just as if the lot were between 2 small houses. This point was raised in the public hearing. There is nothing to suggest that building coverage restriction in this instance would be of benefit to the character of the community. *Staff recommends amending ZTA 08-11 to limit any lot to the average building lot coverage on the 2 abutting lots facing the same street as the subject lot.*

What anomalies would occur under ZTA 08-11?

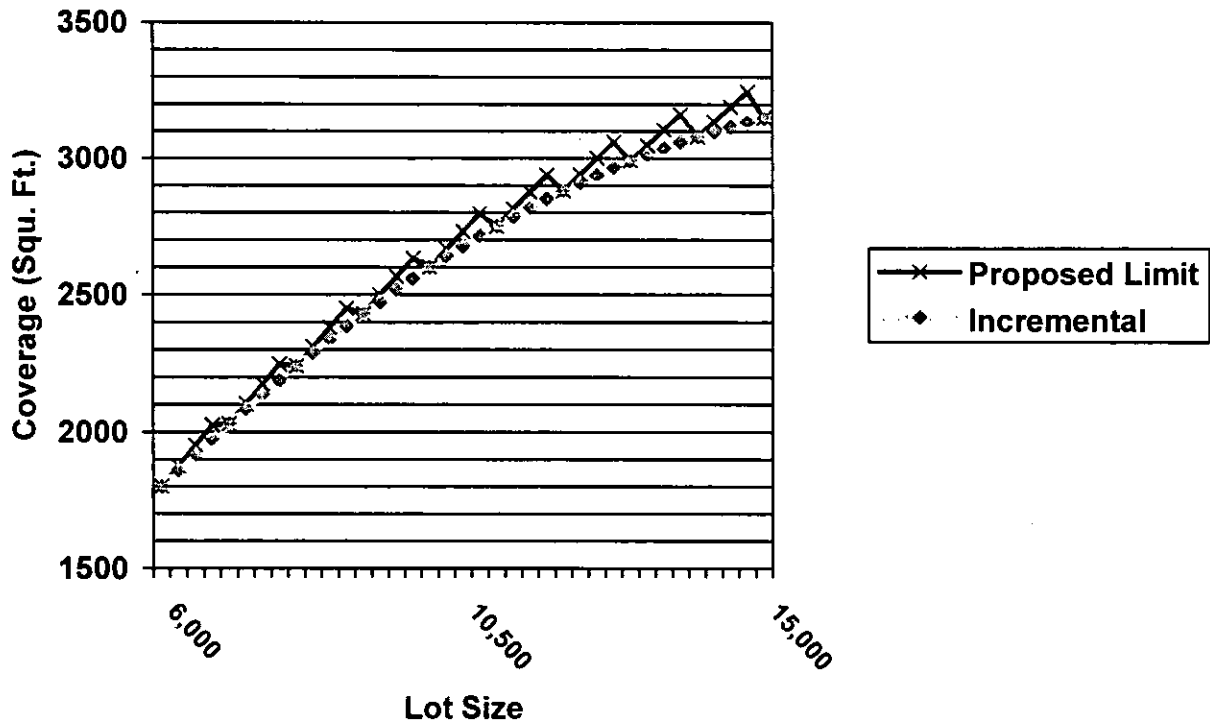
ZTA 08-11 would establish a different building coverage standard for every 1,000 square feet of land area for lots 6,000 square feet in size or larger. The limit on the percentage of building coverage would be reduced by 1 percent for each 1,000 square feet up to 15,000 square feet. The math of the proposed regulation would allow less building footprint area for each 1,000 square foot of land area.⁵

Under ZTA 08-11, building coverage would not be directly proportional to a lot's land area; it creates a different percentage for every 1,000 square foot increment of land area that would be applied to the total lot area. There are unusual results at the edge of every increment of change. More building coverage would be allowed on a smaller lot than on a larger lot. For example, a 6,999 square foot lot would be allowed a building coverage of just under 2,100 square feet. A 7,000 square foot lot would be allowed a building coverage of 2,030 feet. Any lot less than 7,240 square feet would be allowed less building coverage than a lot of 6,999 square feet. The same anomaly occurs as lot sizes approach every 1,000 square foot increment.

One alternative that would equal the same building coverage at each 1,000 square foot increment would be to apply a percentage of lot coverage for the first 6,000 square feet of lot area and then reduce that percentage of coverage allowed by .00001 for each square foot over 6,000 square feet. The effect of this formula compared to the limits proposed in ZTA 08-11 is graphed in the chart below.

⁵ In a broad sense, the current regulations have the same effect. Every 1,000 square foot of R-60 zoned land currently is allowed 350 square feet of building. Every 1,000 square foot of R-200 zoned land is allowed 250 square feet of building.

Alternative Building Coverage Limits



As requested by Councilmembers, the Planning Staff used GIS data to determine how many houses currently exceed the proposed limits of ZTA 08-11. These data should be available at the Committee's worksession.

This packet contains

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Ordinance No:
Zoning Text Amendment No: 08-11
Concerning: Standards – Residential Zones
Draft No. & Date: 2 – 5/06/08
Introduced: May 6, 2008
Public Hearing: June 17, 2008
Adopted:
Effective:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: Councilmembers Berliner, Andrews, Elrich, and Trachtenberg

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- amend the provisions concerning an established building line;
- require regulations to implement the provision concerning a sloping lot;
- amend the maximum height for certain lots in the R-200 zone;
- amend the maximum building coverage for certain lots in certain one-family residential zones; and
- generally amend the development standards for one-family residential zones.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-A-5	“COMPLIANCE REQUIRED”
Section 59-A-5.33	“Established building line”
Section 59-A-5.41	“Additional stories on sloping lots”
DIVISION 59-C-1	“RESIDENTIAL ZONES, ONE-FAMILY”
Section 59-C-1.32	“Development standards”

EXPLANATION: ***Boldface** indicates a heading or a defined term.*

Underlining indicates text that is added to existing laws by the original text amendment.

[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.

Double underlining indicates text that is added to the text amendment by amendment.

[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.

**** indicates existing law unaffected by the text amendment.*

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. DIVISION 59-A-5 is amended as follows:

Division 59-A-5. Compliance Required.

* * *

59-A-5.33. Established building line.

(a) The established building line, as defined in Section 59-A-2.1, applies only to new buildings in the R-60, R-90, R-150 and R-200 zones. The established building line does not apply to an alteration or addition to an existing building.

(b) The two or more main buildings considered in determining the established building line must all be:

(1) [all be] within 300 feet of the side property line of the proposed construction site [(excluding corner lots)] measured along the street frontage;

(2) [all be] along the same side of the street;

(3) [all be] between intersecting streets or to the point where public thoroughfare is denied;

(4) [all] in existence [exist at the time] when the building permit application is filed;

(5) [not be nonconforming, unlawfully] legally constructed [, or constructed pursuant to a lawfully granted variance]; and

(6) [not be located on a pipestem or flag-shaped lot.] not on a through lot if the building on the through lot fronts on a street other than the street fronting the subject property.

(c) The established building line is the minimum setback for the zone, unless there are at least two buildings as described in subsection (b) and more than 50 percent of the buildings described in subsection (b) are set back greater than the minimum, in which case the average

setback of all the buildings described in subsection (b) excluding those buildings;

(1) in the R-200 zone that are or were ever served by well or septic[,];

(2) on the subject property;

(3) in a different zone than the subject property;

(4) on a through lot that fronts on a street different than the subject property,

(5) located on any pipestem, wedge-shaped, or flag-shaped lot; or

(6) approved by permit for demolition.

is the established building line unless the applicant chooses to calculate the setback as the average setback of the two adjoining lots. All calculations must be based on a survey that is signed and sealed by a licensed engineer or surveyor. The engineer or surveyor who signed the survey must also file an affidavit attesting to the accuracy of the survey. Any building excluded from the established building line restriction must comply with the minimum setback requirement of the zone.

(d) Corner lots have two front yards and are subject to established building line standards on both streets.

* * *

59-A-5.41. Additional stories on sloping lot.

On any sloping lot, stories in addition to the number permitted in the zone in which [such] the lot is [situated shall] located must be permitted on the downhill side of any building erected on [such] the lot, but the building height limit [shall] must not otherwise be increased above that specified for the zone. The Department must implement this section under a regulation adopted under method 2.

* * *

Sec. 2. DIVISION 59-C-1 is amended as follows:**DIVISION 59-C-1. RESIDENTIAL ZONES, ONE-FAMILY.**

* * *

59-C-1.32. Development standards.

* * *

	RE-2	RE-2C	RE-1	R-200	R-150 ³	R-90	R-60	R-40 ²	R-4 plex	RMH 200
59-C-1.327. Maximum Building Height (in Feet).										
Except for agricultural buildings, and except as provided in Division 59-B-1, the maximum height of any building <u>or structure</u> [shall] <u>must</u> be [as follows]:										
For any building in these zones:	50	50	50	50*	50			35		50
For a main building in these zones:									35	
For a main building in the zones indicated (*):						*	*			

	RE-2	RE-2C	RE-1	R-200	R-150 ³	R-90	R-60	R-40 ²	R-4 plex	RMH 200
The height must not exceed: (1) 35 feet when measured to the highest point of roof surface regardless of roof type, or (2) 30 feet to the mean height level between the eaves and ridge of a gable, hip, mansard, or gambrel roof, subject to the following:										
(a) The height must not exceed 2 ½ stories ⁵ or 30 or 35 feet, depending on the method of measurement, if other lots on the same side of the street and in the same block are occupied by buildings with a building height the same or less [that] <u>than</u> this requirement.										
(b) The height may be increased to either 3 stories or 40 feet if approved by the [planning board] <u>Planning Board</u> [through the] <u>in a site plan [approval</u> procedures of division 59-D-3].						*	*	*		
An accessory building in these zones must not exceed:									20 ⁹	

	RE-2	RE-2C	RE-1	R-200	R-150 ³	R-90	R-60	R-40 ²	R-4 plex	RMH 200
An accessory building in these zones, must not exceed 2 stories, and the height from existing grade to the highest point of roof surface must not exceed:						20 ⁹	20 ⁹	20 ⁹		
59-C-1.328. Coverage.										
-Maximum percentage of net lot area that may be covered by buildings, including accessory buildings:	25	25	15	25 ^{**}	25 ^{**}	30 ^{**}	35 ^{**}	40 ^{**}		25
-Maximum percentage of tract that may be covered by buildings:									35	
-Maximum percentage of tract [to be] devoted to green areas:									50	

* If the lot: (1) was created by a plat recorded before January 1, 1996, or by a plat of 5 or fewer lots recorded after January 1, 1996; (2) is less than 40,000 square feet in area; and (3) is the site of a building permit application filed after {date ZTA enacted}, then the maximum allowable building height is determined by either of two methods and varies with the lot area as follows:

Lot Area in Square Feet

Height in Feet

<u>Equal to or greater than</u>	<u>And less than</u>	<u>Height to the highest point of any roof</u>		<u>The mean height in feet between the eaves and ridge of a gable, hip, mansard, or gambrel roof</u>
<u>25,000</u>	<u>40,000</u>	<u>45</u>	<u>or</u>	<u>40</u>
<u>15,000</u>	<u>25,000</u>	<u>40</u>	<u>or</u>	<u>35</u>
<u>0</u>	<u>15,000</u>	<u>35</u>	<u>or</u>	<u>30</u>

Any building constructed under a building permit application filed before {date ZTA enacted} is not non-conforming, but the building height must not be increased if it exceeds these standards.

** If the lot was created by a plat recorded before January 1, 1996, or by a plat of 5 or fewer lots recorded after January 1, 1996, then the maximum percentage of lot area that may be covered by buildings, including any accessory building and any building floor area above a porch, but not including any bay window, chimney, or porch, must vary with the lot area as follows:

Lot area less than 6,000 square feet: 30 percent.

Lot area equal to or greater than 6,000 square feet but less than 15,000 square feet: 30 percent, less one percent for every 1,000 square feet of lot area exceeding 6,000 square feet.

Lot area equal to or greater than 15,000 square feet: 20 percent.

Any building constructed under a building permit application filed before {date ZTA enacted} is not non-conforming, but it must not increase the lot area covered if it exceeds the applicable limit.

* * *

Sec. 3. Effective date. This ordinance takes effect 20 days after the date of Council adoption.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIRMAN

MONTGOMERY COUNTY PLANNING BOARD

The Maryland-National Capital Park and Planning Commission

June 13, 2008

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Zoning Text Amendment No. 08-11

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 08-11 at its regular meeting on June 12, 2008. After careful review of the information of record, the Board, by a 2 to 2 vote, could not reach a majority recommendation on the text amendment.

The purpose of the text amendment is to implement a number of the recommendations of the Infill Housing Task Force including: graduated-scale lot coverage for infill housing construction (based on lot sizes), a method for simplifying the Established Building Line (EBL) standards, excluding certain architectural features from lot coverage calculation and revision of building heights in the R-200 zone to be consistent with the height requirements of the R-60 and R-90 zones. The Board generally agrees that there is an overall need for addressing issues that impact site design compatibility in the smaller lot residential zones. However, the Planning Board could not reach a consensus on the types of grandfathering provisions that would be appropriate for the various existing scenarios impacted by the proposed reduction of building height in the R-200 zone and the proposed graduated lot coverage legislation. For example, all Board members agree that any structure that conforms to existing regulations (but not the new law) should be able to be rebuilt if destroyed or seriously damaged. Some Board members also believe that homeowners that have not maximized their development potential under the current zoning regulations should be permitted to maintain the development potential of the property even if the new

regulations of ZTA No. 08-11 reduce the building envelope. A third unresolved compliance issue pertains to whether a building permit filed, but not approved, prior to the effective date of the text amendment would be required to adhere to the new regulations.

Overall, those Board members voting against the text amendment believe that there are too many unanswered questions concerning the potential impact of the legislation on existing structures while those Board members voting in favor of the text amendment support the policy of Zoning Text Amendment 08-11 and believe, if adopted, the text amendment will provide an improvement in the compatibility of infill structures in many existing small lot neighborhoods in the County.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing are comments by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, with Vice-Chairman Robinson and Chairman Hanson voting in favor of the text amendment while Commissioners Bryant and Cryor voted not to approve the legislation, at its regular meeting held in Silver Spring, Maryland, on Thursday, June 12, 2008.



Royce Hanson
Chairman

RH: gr



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item # 11
6/12/08

DATE: June 4, 2008
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief, Development Review *PK*
Ralph Wilson, Zoning Supervisor *RW*
FROM: Greg Russ, Zoning Coordinator *GR*
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To amend the Zoning Ordinance to amend the provisions concerning an established building line; require regulations to implement the provision concerning a sloping lot; amend the maximum height for certain lots in the R-200 zone; and amend the maximum building coverage for certain lots in certain one-family residential zones

TEXT AMENDMENT: No. 08-11
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: Councilmember Berliner, Andrews, Elrich, and Trachtenberg
INTRODUCED DATE: May 6, 2008
PLANNING BOARD REVIEW: June 12, 2008
PUBLIC HEARING: June 17, 2008; 7:30pm

STAFF RECOMMENDATION: Approve ZTA 08-11 to implement a number of the recommendations of the Infill Housing Task Force including: graduated-scale lot coverage for infill housing construction (based on lot sizes), a method for simplifying the Established Building Line (EBL) standards and revision of building heights in the R-200 zone to be consistent with the height requirements of the R-60 and R-90 zones.

PURPOSE AND BACKGROUND OF THE TEXT AMENDMENT

In the Planning Department's Fiscal Year 2007-08 budget, the County Council added a project to the Department's work program supporting a study of Infill Housing and potential tools to improve the compatibility of Infill Housing.

In the summer of 2007, Councilmember Roger Berliner created an Infill Housing Task Force and appointed members to this group. The Task Force was composed of citizen

representatives, members of the builder community, architects, realtors, Planning Department staff and appropriate County staff, and Councilmember Berliner's staff. The work of the Task Force was facilitated by the Conflict Resolution Center of Montgomery County. ZTA 08-11 implements a number of the recommendations of the Task Force, although not all aspects of this ZTA reflect the opinions of all Task Force members.

An important contribution of Planning Department staff was to outline some of the basic issues that affect site design including: compatibility, allowable lot areas, lot coverage, slope and street grade, sediment and erosion control, setbacks, building height, massing and scale, green area, parking, and accessory structures.

Based on research done in other areas about the infill housing problem, the Task Force identified several issues that would need to be examined. These included:

- Floor Area Ratio (FAR)
- Lot Coverage Reduction – potentially on a graduated basis depending on the lot size
- Established Building Lines (EBL)
- Sloping Lot Definition
- Height in R-200 Zone
- Massing Guidelines – voluntary or mandatory
- Neighbor Notification

After careful study, the Infill Housing Task Force was able to reach consensus on a number of important solutions to these issues; however, other issues (some of which are covered by this ZTA) did not result in consensus.

ANALYSIS

I. ESTABLISHED BUILDING LINE (EBL)

The EBL is the minimum front yard building line unless the parameters as depicted in subsection (b) of Section 59-A-5.33 apply where at least two adjacent main buildings (within a 300 foot distance) have an average setback greater than the minimum for the zone. The ZTA clarifies the intent of this existing language. The ZTA also provides an option for the applicant to choose an easier calculation method by allowing the EBL to be based on the average setback of the two adjoining lots. To use this method, all calculations must be based on a licensed survey. In order to perform the survey, the applicant would be required to obtain access to the two adjacent properties. **Staff recommends approval of the Established Building Line changes, with minor clarifications.**

II. SLOPING LOTS

Section 59-A-5.41 states that, on a sloping lot, stories in addition to the number permitted in the zone can be allowed on the downhill side of any building as long as the building

height limit of the zone is adhered to. The ZTA makes plain language clarifications to Section 59-A-5.41 while also requiring the Department of Permitting Services to implement this section under a Method 2 Executive Regulation. **Staff recommends approval of the proposed minor language changes affecting sloping lots and implementation of a Method 2 Executive Regulation.**

III. HEIGHT IN R-200 ZONE

The Zoning Ordinance currently allows a building height of 50 feet for all lots in the R-200 zone. This is significantly higher than what is allowed in the R-60 and R-90 zones, which have a maximum building height of 30 feet at the midpoint of the roof and 35 feet at the ridge.

The consensus of the Task Force was that the building heights for certain lots below the minimum lot size in the R-200 zone should be generally consistent with similarly sized lots in the R-60 and R-90 zones. The consensus on building heights in the R-200-zone was as depicted in the following table:

Recommended Building Heights

	<u>Lot Size</u>	<u>Height [mean/ridge]</u>
a.	<15,000 sf	30'/35'
b.	>15,000 sf <25,000 sf	35'/40'
c.	>25,000 sf <40,000 sf	40'/45'
d.	>40,000 sf	50'

Under the ZTA, lots in the R-200 zone that are within the lot size range of the R-60 zone and R-90 zone would be limited to the height requirements of those zones (30' at the midpoint of the roof and 35' feet at the ridge) while those larger R-200 zoned lots in the size range of a typical RE-1 zoned lot would be allowed to maintain the 50' building height limit. **Staff believes the Infill Task Force recommendations for setting building height limits in relation to lot size in the R-200 addresses important design and compatibility issues and should be approved.**

IV. MASSING GUIDELINES

Another issue discussed by the Task Force was the need to break up the massing of buildings. There was general agreement that encouraging architectural features – such as porches, bay windows, and chimneys - was a method to address the massing issue. One way to encourage features that break up mass that was discussed by the Task Force is to exclude porches, bay windows, balconies, chimneys, and covered stoops from the calculation of lot coverage. The ZTA proposes to exclude many of these features from the calculation of lot coverage (lines 71-72 of the ZTA). **Staff supports this recommendation.**

V. LOT COVERAGE REDUCTION

As explained in the Task Force report, a great deal of work focused on lot coverage. Through review of the R-60, R-90 and R-200 zones, the group examined the impacts of lot coverage limits as currently applied in each of the zoning categories. Initial attention concentrated on lot coverage reductions applied per individual zone. However, ensuing discussion led to exploration of a framework for a sliding scale for lot coverage for the subject residential zones. The concept was explored over a number of Task Force meetings, essentially pointing to a uniform method of inverse proportional allowance. Please note that, although the concept of a sliding scale was endorsed by all Task Force members, there was no consensus on the percentages for each size lot. The percentages in this ZTA have been developed by Councilmember Berliner's office, not by the Task Force.

The ZTA implements this concept by creating a graduated scale for lot coverage in the R-200, R-150, R-90, R-60, and R-40 zones. Lot coverage is based on actual lot size—not on the minimum lot size requirement of the zone. The proposed lot size/lot coverage ratios are as follows:

- Lot area less than 6,000 square feet: 30 percent.
- Lot area equal to or greater than 6,000 square feet but less than 15,000 square feet: 30 percent, less one percent for every 1,000 square feet of lot area exceeding 6,000 square feet.
- Lot area equal to or greater than 15,000 square feet: 20 percent.

Staff supports the Task Force approach of a sliding scale for lot coverage.

The compliance provisions of the ZTA tie the proposed requirements to lots created by recorded plat before January 1, 1996 or by plat of 5 or fewer lots recorded after January 1, 1996. The date responds to the maximum validity period of 12-years (from the current year - 2008) for a subdivision plat (APF for preliminary plan approved before a certain date) while the "5 or fewer lots" pertains to the intent of the legislation to address infill development, not larger subdivisions.

Attachment 2 provides charts depicting the impact of the lot coverage provisions on the R-60, R-90 and R-200 zones. A summary of the impacts are as follows:

For R-200 zoned lots:

A total of 46,806 lots in the R-200 Zone

24.7% of all lots meet current standards (20,000sf)

75.3% are smaller than 20,000 sf

50.8 % of the lots fall into the size of 9,000-20,000 sf ("R-90 size typology")

R-200 is the only zone with a gain in lot coverage for some lots (28.45 % of R-200 lots and 8.90% of overall lot total over all zones)
35% of the lots are either not affected or have a gain in lot coverage

For R-90 zoned lots

A total of 37,303 lots in the R-90 Zone

This category is the most stable -- the highest percentage of 0% change under the proposed amendment.

63.6 % of all lots conform to current standards

R-60 zoned lots

A total of 64,202 lots in the R-60 Zone

75% lots comply with current standards

R-60 lots are the most affected by the legislation (100% of lots)

Note: Almost 17% of the sample lot distribution would, under the legislation, gain lot coverage or remain the same.

The higher lot coverage reductions (11% -15% reductions) are exceedingly small statistically [i.e., 14% reduction = .3% of sample].

It should be noted that the uneven distribution in lot coverage reductions reflects the large numbers of non-standard lot sizes, particularly in the wide-ranging R-200 lots. The primary exception to this pattern is that generated by the larger number of generally conforming lots in the R-90 zone.

The attached charts provide scenarios of 5 different lot sizes to show the change in house sizes as a result of the proposed lot coverage provisions. In no case (including the most severe case of a lot coverage reduction of 15% on a 20,000 square foot lot in the R-60 zone, which results in a maximum house size of 10,000) is a property unduly limited in terms of building size.

GR

Attachments

1. Proposed Text Amendment No. 08-11 (as modified by staff)
2. ZTA Legislation Lot Coverage Impact Charts for R-60, R-90 and R-200 Zones

Appendix: Staff Analysis

Zoning Text Amendment 08-11
Proposed legislation concerning: Standards – Residential Zones

R-60 Zone	6,000 sf minimum	# Lots	%
Total lots			
		64,202	100%
Non Compliant @ < 6,000 sf		15,947	24.80%
Compliant with current standards			
@ 6,000-8,999 sf (r-60 size)		48,255	75.20%
@ 9,000-19,999 sf (r-90 size)		34,783	54.10%
@ > 20,000 sf (r-200 size)		12,544	19.50%
		928	1.40%
Effects of legislation : R-60 Zone			
Lot coverage Reduction			
< 6,000 sf)		64,202	100.00%
< 6,000 sf)		15,947	24.80%
(6,000-8,999 sf)		34,783	54.17%
(9,000-14,999 sf)		11,347	17.67%
(15,000-19,999 sf)		1,197	1.80%
> 20,000 sf)		928	1.44%

R-90 Zone	9,000 sf minimum	# Lots	%
Total lots			
		37,303	100%
Non Compliant (lesser lot area)		13,547	36.31%
@ < 6,000 sf (< r-60 size)		8,453	22.66%
@ 6,000-8,999 sf (r-60 size)		5,094	13.65%
Compliant with current standards			
@ 9,000-19,999 sf (r-90 size)		23,760	63.69%
@ > 20,000 sf (r-200 size)		21,677	60.59%
		928	2.40%
Effects of legislation: R-90 Zone			
No Effect on Lot Coverage			
< 6,000 sf)		8,453	22.70%
< 6,000 sf)		8,453	22.70%
Lot Coverage Reduction			
< 6,000 sf)		28,854	77.30%
< 6,000 sf)		5,094	13.65%
(6,000-8,999 sf)		9,849	26.40%
(6,000-8,999 sf)		8,660	23.30%
(6,000-8,999 sf)		3,168	8.49%
> 20,000 sf)		2,083	5.58%

Zoning Text Amendment 08-11
Proposed legislation concerning: Standards – Residential Zones

R-200 Zone 20,000 sf minimum		# Lots	%
Total lots		46,806	100%
Non Compliant (less lot area)		35,224	75.25%
@ < 6,000 sf (< r-60 size)		7,811	16.69%
@ 6,000-8,999 sf (r-60 size)		3,596	7.68%
@ 9,000-19,999 sf (r-90 size)		23,817	50.88%
Compliant with current standards		11,582	24.71%
@ >20,000 sf (r-200 size)		11,582	24.71%
Effects of legislation: R-200 Zone			
No Effect on Lot Coverage		3,248	6.94%
@ 10,000@ -10,999 sf 0.00%		3,248	6.94%
Lot Coverage Gain		13,213	28.45%
< 6,000 sf)		7,811	16.69%
(6,000-8,999 sf)		5,402	11.55%
Lot Coverage Reduction		30,345	64.61%
@ 11,000-14,999 sf 1-4%		9,077	19.30%
@ 15,000-19,999 sf 5%		9,686	20.60%
@ >20,000 sf 5%		11,582	24.71%

Summary - All Lots		# Lots	%
Total lots		148,311	100%
No Effect on Lot Coverage		11,701	7.90%
0% R-90 Zone		8,453	5.70%
0% R-200 Zone		3,248	2.20%
Lot Coverage Gain		13,213	8.90%
1% R-200		1,806	1.20%
2% R-200		1,223	0.80%
3% R-200		1,166	0.70%
4% R-200		1,207	0.80%
5% R-200		7,811	5.20%
Lot Coverage Reduction		123,401	83.20%
1% R-90 & R-200		3,588	1.90%
2% R-90 & R-200		3,391	2.20%
3% R-90 & R-200		4,996	3.30%
4% R-90 & R-200		7,693	5.10%
5% R-60 & R-90 & R-200		41,563	28.02%
6% R-60 & R-90		17,339	11.60%
7% R-60 & R-90		15,251	10.20%
8% R-60 & R-90		9,578	6.40%
9% R-60 & R-90		5,959	4.00%
10% R-60 & R-90 & R-200		8,101	5.40%
11% R-60		1,614	1.00%
12% R-60		1,062	0.70%
13% R-60		669	0.40%
14% R-60		468	0.30%
15% R-60		2,125	1.40%

AGREEMENT IN PRINCIPLE OF THE INFILL DEVELOPMENT TASK FORCE

The members of the infill development task force have reached an agreement in principle on the legislation and ZTA that comprises the Infill Development Reform Act of 2008. This agreement is contingent on the adoption of final legislative language that is consistent with these principles. On the basis of this agreement in principle, all members of the task force have agreed to either support the legislation or not oppose it, or take any actions or make statements inconsistent with non-opposition.

This agreement in principle encompasses the following issues:

Definition of Infill: The definition will be modified to ensure that the scope of the language captures older, established communities and is not overbroad. It is contemplated that the term "resubdivision" will be substituted for "subdivision" in the context of the ZTA's scope as it pertains to 5 units or fewer, assuming that such a modification does not inadvertently exclude older, downcounty areas. Within the next several weeks, NNCPPC will document the possible impact of using resubdivision as a criterion to confirm the scope of this revised approach is neither overbroad or underinclusive.

Effective Date: The effective date of ZTA 08-11 and 15-08 will be revised: at line 84 add: "Any building permit application filed and accepted as completed by the Department of Permitting Services within 120 days of the effective date may be approved and constructed under the prior standards."

Single Car Garage Exemption: The ITF agreed that single car detached garages are a desirable architectural feature and should be encouraged. Therefore, a homeowner is granted a credit up to 240 SF of a detached single-car garage (i.e. the footprint of the single car detached garage will not be included in the lot coverage calculation). The ITF further agrees that all single car detached garages in R-40, R-60, R-90, and R-200 zones will not be higher than the current regulation in R-40, R-60, and R-90 zones, where the height limit for detached garages is 15 feet to the mean point of the roof and 20 feet to the peak.

Notice Provisions: The notice provision will be altered in the following manner: Strike lines 85 and 86 and insert new language so that the section will now read: "at least 30 days before filing the application, the applicant delivered or sent written notice of the applicant's name, address, and telephone number and non-binding information regarding the non-binding SCOPE OF WORK or a non-binding drawing of each proposed building or addition. Modification to the SCOPE OF WORK or drawings will not give rise to a denial of the building permit or provide a basis of appeal."

“SCOPE OF WORK” is defined as allowable building size, height, and setbacks within the zone classification.

Example: If an applicant submits to DPS, with the building permit application, the required affidavit, including either the non-binding rendering or non-binding scope of work, and lists the contacted parties, then the applicant has fulfilled this notice requirement.

Grandfathering: The grandfathering language will be clarified. To be clear, what this means is that if an existing house exceeds the lot coverage or height limit allowed by the new law, it may be rebuilt to the lot coverage or height existing prior to the date of the adoption of the bill. A house with lot coverage below the current law may be rebuilt no larger than the lot coverage in the new legislation.

Examples: 1) A house that is now at 32% lot coverage is destroyed by fire or another act of God. It may be rebuilt to 32% lot coverage but can not be any larger. 2) A house on a 6,000 SF lot now stands at 25% and is destroyed by fire. It may be rebuilt to 30% lot coverage. 3) If a house on a 6,000 SF lot is at 35% lot coverage and is destroyed by fire or another act of God, it may be rebuilt to 35%. 4) If a house in an R-200 zone is 50 feet tall and is destroyed by fire or another act of God, it may be rebuilt to 50 feet.

Porches and Bay Windows: The language will be clarified to permit an uncovered, unconditioned area above a porch. It is understood that bay windows includes bay windows that provide additional floor space.

Established Building Lines: The following language will be added to the EBL section of the ZTA:

ZTA 08-11 – Standards Residential Zones

1. Line 9: insert after main ‘single family detached residential’ buildings. It is agreed that commercial and/or non-residential buildings should not be included when calculating the EBL; only single family detached residential buildings should be considered for the EBL calculation.
2. Line 39: insert after two adjoining lots ‘*or the applicant may choose to use the front setback of the existing structure that was established prior to demolition, providing that the existing building meets the minimum setback of the zone.*’
3. Lines 41 & 42: delete ‘The engineer or surveyor who signed the survey must also file an affidavit attesting to the accuracy of the survey.’ It is agreed that a survey that is signed and sealed by a licensed engineer or surveyor is sufficient.
4. Line 47: insert after both streets ‘At the option of the applicant, corner lots may use the front setbacks of the adjoining buildings on either side.’
Line 66: delete ‘before date ZTA enacted’ and insert ‘on or after the effective date’.

Sec. 1. DIVISION 59-A-5 is amended as follows:

Division 59-A-5. Compliance Required.

* * *

59-A-5.33. Established building line.

(a) The established building line, as defined in Section 59-A-2.1, applies only to new buildings in the R-60, R-90, R-150 and R-200 zones. The established building line does not apply to an alteration or addition to an existing building.

(b) The two or more ~~[[main]]~~ one-family detached residential buildings considered in determining the established building line must all be:

(1) ~~[all be]~~ within 300 feet of the side property line of the proposed construction site ~~[(excluding corner lots)]~~ measured along the street frontage;

(2) ~~[all be]~~ along the same side of the street;

(3) ~~[all be]~~ between intersecting streets or to the point where public thoroughfare is denied;

(4) ~~[all]~~ in existence ~~[exist at the time]~~ when the building permit application is filed;

(5) ~~[not be nonconforming, unlawfully]~~ legally constructed [, or constructed pursuant to a lawfully granted variance]; and

(6) ~~[not be located on a pipestem or flag-shaped lot.]~~ not on a through lot if the building on the through lot fronts on a street other than the street fronting the subject property.

(c) The established building line is the minimum setback for the zone, unless there are at least two buildings as described in subsection (b) and more than 50 percent of the buildings described in subsection (b) are set back greater than the minimum, in which case the average

setback of all the buildings described in subsection (b), excluding those buildings:

- (1) in the R-200 zone that are or were ever served by well or septic,
- (2) on the subject property,
- (3) in a different zone than the subject property,
- (4) on a through lot that fronts on a street different than the subject property,
- (5) located on any pipestem, wedge-shaped, or flag-shaped lot, or
- (6) approved by permit for demolition,

is the established building line unless the applicant chooses to calculate the setback as the average setback of the two adjoining lots or the applicant chooses to use the front setback of the existing one-family building that was established before demolition, if the existing building meets the minimum setback of the zone. All calculations must be based on a survey that is signed and sealed by a licensed engineer or surveyor. [[The engineer or surveyor who signed the survey must also file an affidavit attesting to the accuracy of the survey.]] Any building excluded from the established building line restriction must comply with the minimum setback requirement of the zone.

- (d) Corner lots have two front yards and are subject to established building line standards on both streets. At the option of the applicant, corner lots may use front setbacks of the adjoining buildings on both sides of the corner lot.

* * *

59-A-5.41. Additional stories on sloping lot.

On any sloping lot, stories in addition to the number permitted in the zone in which [such] the lot is [situated shall] located must be permitted on the downhill side of any building erected on [such] the lot, but the building height limit [shall] must not otherwise be increased above that specified for the zone. The Department must implement this section under a regulation adopted under method 2 of Section 2A-15.

* * *

Sec. 2. DIVISION 59-C-1 is amended as follows:

DIVISION 59-C-1. RESIDENTIAL ZONES, ONE-FAMILY.

* * *

59-C-1.32. Development standards.

* * *

	RE-2	RE-2C	RE-1	R-200	R-150 ³	R-90	R-60	R-40 ²	R-4 plex	RMH 200
59-C-1.327. Maximum Building Height (in Feet).										
Except for agricultural buildings, and except as provided in Division 59-B-1, the maximum height of any building or structure [shall] <u>must</u> be [as follows]:										
For any building in these zones:	50	50	50	50*	50			35		50
For a main building in these zones:									35	

	RE-2	RE-2C	RE-1	R-200	R-150 ³	R-90	R-60	R-40 ²	R-4 plex	RMH 200
For a main building in the zones indicated (*):						*	*			
The height must not exceed: (1) 35 feet when measured to the highest point of roof surface regardless of roof type, or (2) 30 feet to the mean height level between the eaves and ridge of a gable, hip, mansard, or gambrel roof, subject to the following:										
(a) The height must not exceed 2 ½ stories ⁵ or 30 or 35 feet, depending on the method of measurement, if other lots on the same side of the street and in the same block are occupied by buildings with a building height the same or less [than] <u>than</u> this requirement.										
(b) The height may be increased to either 3 stories or 40 feet if approved by the [planning board] <u>Planning Board</u> [through the] <u>in a</u> site plan [approval procedures of division 59-D-3].						*	*	*		
An accessory building in these zones must not exceed:									20 ⁹	

* If the lot: (1) was created by a plat recorded before January 1, 1996, or by a plat of resubdivision of 5 or fewer lots recorded after January 1, 1996; (2) is less than 40,000 square feet in area; and (3) is the site of a building permit application filed after {the effective date **[[ZTA adopted]]**}, then the maximum allowable building height is determined by either of two methods and varies with the lot area as follows:

Height in Feet

6 (24)

73 [[Any building constructed under a building permit application filed before {date ZTA adopted}
74 is not non-conforming, but the building height must not be increased if it exceeds these
75 standards.]] Any building constructed or proposed under a building permit filed before {the
76 effective date} is conforming. Any such building may be continued, maintained, repaired, and,
77 if demolished by accidental or natural forces, rebuilt to the same building height, three
78 dimensional shape, and lot coverage allowed under any building permit filed anytime before {the
79 effective date }.

80 ** If the lot is less than 20,000 square feet in area and was created by a plat recorded before
81 January 1, 1996, or by a plat of resubdivision of 5 or fewer lots recorded after January 1, 1996,
82 then the maximum percentage of lot area that may be covered by any building, including any
83 accessory building and any [[building]] weatherproofed floor area above a porch, but not
84 including any bay window, chimney, [[or]] porch, or a detached garage, if the garage is less than
85 241 square feet of floor area and less than 20 feet in height, must vary with the lot area as
86 follows:

87 Lot area less than 6,000 square feet: 30 percent.

88 Lot area equal to or greater than 6,000 square feet but less than 15,000 square feet: 30
89 percent, less one percent for every 1,000 square feet of lot area exceeding 6,000 square
90 feet.

91 Lot area equal to or greater than 15,000 square feet but less than 20,000 square feet: 20
92 percent.

93 [[Any building constructed under a building permit application filed before {date ZTA adopted}
94 is not non-conforming, but it must not increase the lot area covered if it exceeds the applicable
95 limit.]] Any building constructed or proposed under a building permit filed before {the effective
96 date} is conforming. Any such building may be continued, maintained, repaired, and, if
97 demolished by accidental or natural forces, rebuilt to the same building height, three dimensional
98 shape, and lot coverage allowed under any building permit filed anytime before {the effective
99 date}.


100 * * *

101 **Sec. 3. Effective date.** This ordinance takes effect [[20]] 140 days after the
102 date of Council adoption.

103 This is a correct copy of Council action.

MEMORANDUM

TO: County Council

FROM: Ralph D. Wilson, Senior Legislative Analyst 

SUBJECT: **Introduction** - ZTA 97019, - revised notification requirements, appeal provisions and development standards for replacement and expansion of buildings on lots recorded by deed or subdivision before January 1, 1954 in the R-60, R-90, and R-200 zones.

Background. Some background on this issue may be useful. Sometime ago staff, at the request of the Council, examined the development standards and other issues related to the replacement and expansion of homes in older neighborhoods. "Teardown" as the phenomenon is sometimes known is most noticeable in communities with two characteristics: 1) they are almost completely built up; and 2) they experienced a tremendous jump in real estate prices in the 1980s. Several controversial teardowns have occurred in Montgomery County where these conditions exist. The impact has been neighborhood conflicts and instances of litigation. Nationwide the teardown phenomenon is generally seen as undesirable because of its impact on the character and stability of established neighborhoods. Approaches that have been taken in several jurisdictions to address the teardown issue include restrictive setbacks and lot coverage requirements, FAR requirements, design requirements, and conservation districts. The Planning, Housing, and Economic Development Committee on reviewing the teardown issue a while back moved a Department of Permitting Service "established building line" proposal forward for introduction. The Committee recommendation on the "established building line" proposal is up for approval on Tuesday.

Proposed Revisions. Several of the regulatory approaches identified above are included in the zoning legislation to be introduced on Tuesday by Councilmembers Leggett, Subin, and Krahnke. Under the zoning legislation the building permit review and approval process, and the development standards affecting the expansion, alteration, and replacement of older homes on lots recorded by deed or subdivision before January 1, 1954 are revised. The effect is to increase

the notice period of the issuance of a building permit for any construction activity on a lot recorded before January 1, 1954 and to require any alteration or replacement of an existing structure on a pre-1954 lot to conform with established building line, setback, yard, and revised height restrictions. The use of Floor Area Ratios (FAR) is proposed as a method for limiting the size and bulk of residential construction on any lot recorded before January 1, 1954 to a scale compatible with the existing homes in the neighborhood. The full rationale for the proposal and explanation of all notification, appeal period, and development standard amendments is contained in the attached submittal from Norm Knopf, on behalf of several citizen groups.

Screening Committee. The proposed amendments were carefully reviewed by the Screening Committee. The Committee recommended several revisions to the original submittal - some were included and some were not. At the Committee's request, the scope of the amendment was narrowed only to apply to lots recorded before June 1, 1958, the role of the Planning Board in the building permit approval process was clarified, and ambiguous provisions were eliminated. Suggestions related to FAR calculations, use of average finish grade as methodology for determining the building height, and the building permit review process were not fully reflected in the revised submittal. Further comments on these issues will be presented by the Planning Board and Department of Permitting Services at the public hearing.

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**DEMOLITION AND EXPANSION OF
HOMES IN OLDER NEIGHBORHOODS:
A PROPOSAL FOR REFORM**

I. INTRODUCTION

A. The Mansionization Problem

There are a number of long-established residential neighborhoods in Montgomery County marked by homes built in an era of fewer amenities and less interior space. Close-in, desirable areas have seen increases in land value outstrip increases in the value of their aging homes. The result has been increased pressure to expand such homes through renovation or through essentially complete demolition and replacement with much larger homes (known as "mansionization"). The result is disruption of the delicate but time-tested aesthetic balance of the neighborhood, further erosion of the stock of moderately priced housing, and destruction of much-needed green space. This phenomenon is not limited to Montgomery County; it is occurring nationwide -- wherever there is a desirable neighborhood of aging housing stock.

The problem is rooted in residential zoning laws. When these laws work properly, they ensure that a house "fits" -- both in terms of the lot on which it sits and in terms of the homes in the surrounding neighborhood. By setting limits on the bulk and location of construction, zoning controls can and should promote a sense of proportion and scale. Why is "disproportion" to be avoided? A massive house on a small lot will seem even larger and more out of scale than the same house on a large lot with large setbacks. Set on a small lot, such a house can overwhelm, visually and otherwise, its environs - not just its own lot, but also the neighborhood and its streetscape. No one wants to feel like a medieval serf looking up to the manor house - especially when the manor house may be less than 20 feet away! Properly graduated development standards are tied to the lot size: as the lot increases in size, both the setbacks and the permitted house size should gradually increase.

The Montgomery County Council asked its Planning, Housing and Economic Development Committee to examine whether County Law adequately curbs mansionization. In a January 16, 1996 Memorandum, Senior Legislative Analyst Ralph D. Wilson, after examining existing controls, reported to the Committee as follows:

The County's zoning and subdivision regulations were designed at a time when the concept of demolition and replacement with much larger homes was not conceived and are inadequate to address the issue.

Draft July, 1997 -

For further information contact Norman Knopf, Knopf & Brown, 202-785-8200

Mr. Wilson's conclusion is on target. For example, in an R-60 Zone where the lot was recorded prior to 1954, "grandfathered" development standards no longer in the current Code become applicable and would allow an existing 2,500 square foot home to be "renovated" into something more than twice that size. These circumstances apply to many residential neighborhoods within the County, particularly inside the Beltway. Moreover, under existing procedures, approval to do this may be obtained without notifying one's neighbors, who will discover, when they learn of the approval, that any opportunity to challenge it has been lost. Most vulnerable are older neighborhoods of smaller, down-County lots, where developers and speculators can buy relatively modest homes to tear down and replace with huge new homes, or to renovate and add very large additions. Modest homes are typically sought by young families and by empty nesters leaving larger homes. These prospective purchasers generally cannot compete with the developers and speculators who envision a handsome profit in expanding or tearing down such homes. Thus, the stock of relatively affordable homes in the County is reduced and housing diversity, in terms of house size and resident, is adversely impacted.

B. The Solution - Zoning Code Reform

To preserve the aesthetic character of some of the County's best and oldest residential communities, a group of civic activists and citizens' associations is proposing draft amendments to the Montgomery County Zoning Code and other laws relating to the issuance of building permits for residences, to be introduced before the County Council ("the Proposal"). The Proposal is intended to clarify the standards for, and restore a sense of scale to, development and redevelopment in older, more established neighborhoods.

The Proposal sets out a clear and comprehensive set of standards for homeowners who want to renovate or enlarge existing, older homes. It thereby gives current or prospective homeowners guidance as to how their neighborhoods can gradually grow and change in the future. It is not intended to discourage, but rather should promote, investment in the County's older neighborhoods. Prospective purchasers will be able to buy with the confidence that their home will not be dwarfed by huge new houses or additions. Ample redeveloped houses will be permitted on even the smallest legal lots where houses could be built before, and even larger homes will be permitted on larger lots - thus maintaining the existing scale and proportion of older Montgomery County neighborhoods, without discouraging reasonable and proportionate investment and growth.

As detailed below, the Proposal is designed to implement substantial reform in the residential building permit review, approval and appeal process. This reform has both procedural and substantive dimensions, as true protection can be afforded only with change that encompasses both of these elements.

II. PROCEDURAL REFORM

A. Due Process for Neighbors

The current procedure for approval of redevelopment plans is for the applicant to obtain a renovation or demolition permit from the Montgomery County Department of Permitting Services (DPS). While DPS is not supposed to approve any application not in conformity with the Zoning Ordinance, most residential building permits are "rubber stamped" without close scrutiny and without any opportunity for input by neighbors. Once a permit is issued, the Montgomery County Board of Appeals will reject as untimely any challenge to it not filed within 30 days of issuance, even if the applicant has made no attempt to notify adjacent property owners of the issuance of the permit. If the applicant does not begin construction during this 30-day period, the neighbors are likely to have no inkling that the house next door is about to undergo radical change, and they will not learn about it until after their right to challenge it has expired.

Under the Proposal, the applicant would be required to post the affected property with a conspicuous sign so that affected residents may learn of any proposed permit for work that will affect the "footprint," height or bulk of the existing house, including partial or total demolition. This is to be done at the time the permit is sought, giving neighbors an opportunity to scrutinize the development plans and submit comments to DPS before DPS acts on the permit application. The applicant will also be required to provide the neighbors actual notice of the issuance of the permit. If a building permit is granted, another conspicuous sign, of a different color, must be posted.

These procedural reforms are essential to provide neighbors a modicum of due process in the award of residential building permits and to ensure that timely appeals can be filed. The need for such reform transcends the question of what development standards should apply to new development or redevelopment in older neighborhoods. Moreover, enactment by the Council of standards to address the problem would be meaningless if not accompanied by procedural reforms so that vigilant neighbors can ensure compliance with the standards.

B. Written Planning Commission Approval.

Under both the Regional District Act all building permits -- whether for renovation, new construction or demolition -- require Planning Commission review. But the Commission cannot review a building permit unless and until DPS submits it for review, and DPS regularly fails to do this. No other agency enforces or monitors DPS's referral obligation, and the omission is often overlooked. Sometimes work subject to renovation permit (e.g., kitchen remodeling) triggers no issue that warrants the time and resources involved in Commission review. In other cases, however, the lack of referral to the Commission is a serious problem. DPS regularly fails to refer to the Commission redevelopment permits passed off as renovations even though they

plainly raise issues that warrant Commission review. The Proposal appropriately reinforces the need for Planning Commission review in the most pertinent cases by precluding the issuance of a building permit for new building construction or for work that affects the footprint, height or bulk of an existing building, other than changes due to uncovered porches and decks, until DPS has received the written recommendation of the Commission.

III. CHANGES IN DEVELOPMENT STANDARDS

The development standards that are most likely to come into play when a renovation or demolition permit is sought for an existing dwelling are those for minimum yard size ("setbacks"), lot coverage, and building height. The Proposal's focus is on lots in the R-60, R-90 and R-200 Zones. If the lot in question was recorded prior to 1954, it is "grandfathered," i.e., subject to more liberal development standards from that prior era. If the dwelling is not on a record lot, it may have been carved out of a larger lot by deed. In such situations, its owner may attempt to seek the benefit of the more liberal standards by avoiding any new lot recordation of the smaller parcel. This is why essentially total demolitions are often characterized by developers as "renovations." A large number of residential lots in many long-established County neighborhoods fit into either the grandfathered or unrecorded lot categories. As explained below, the Proposal is designed to apply the same development standards in both situations.

A. Minimum Yard Size ("Setbacks").

The minimum front, side and rear yard requirements, commonly known as setback requirements, limit the extent of the footprint of a house in relation to the boundaries of the lot. These requirements have become more restrictive since 1954 for "ungrandfathered" lots, especially in the R-90 and R-200 zones. This means that renovated homes on grandfathered lots can be built closer to neighboring homes than would be the case on a lot not subject to grandfathering. Rather than create a potentially large category of nonconforming structures with a complete removal of the grandfathering of the setback requirements, the Proposal continues the grandfathering for all structures built before the amendment is enacted, but requires new construction, alterations and enlargements of existing structures to conform to current setback requirements. In addition, the Proposal contemplates DPS enactment of regulations for rear and side yard "flexible setbacks." These are more stringent yard requirements that will be applicable, according to a formula to be developed by DPS, when the height of the mansionization project exceeds either 2 stories or 24 feet.

A particular setback concern is lack of DPS enforcement of the established building line (EBL) requirement, which generally requires a consistent setback from the street for all the houses facing on that side of the street within the same block. A problem is most likely to arise when existing houses have been set back farther from the street than 25', the grandfathered front

yard requirement. (This situation is more likely to occur in the R-90 and R-200 Zones which now require 30 and 40 foot front setbacks, respectively.) DPS has a proven track record of lax or nonexistent enforcement of any EBL requirement, pre-1954 or later. To both minimize confusion and ensure appropriate enforcement, the Proposal makes the current EBL standard applicable to all R-60, R-90 and R-200 lots, regardless of when they were recorded, while grandfathering existing structures that comply with the EBL standard previously in effect.

B. Lot Coverage.

Prior to 1954, there was no maximum lot coverage limitation in the Zoning Ordinance. This means that so long as the setback requirements are not violated, a house can be built on a grandfathered lot to the limits of the front, rear and both side yards. Thus, for example, on a 6,000 square foot, R-60 zoned lot of 60' x 100', a house with a footprint 46' wide and 55' deep could be built, effectively covering over 42% of the lot. In 1954, explicit maximum lot coverage limitations were implemented for the R-60, R-90 and R-200 Zones. Maximum lot coverage in these Zones is 35% (R-60), 30% (R-90) or 25% (R-200). In the above R-60 example, if the lot coverage limitation were in effect, the maximum footprint of the house would be reduced from 2,530 square feet to 2,100 square feet. In a 9,000 square foot R-90 lot, the maximum footprint would be 2,700 square feet; in a 20,000 square foot R-200 lot, it would be 5,000 square feet. Since the setback requirements are essentially the same for all pre-1954 residential lots in all three Zones, formerly designated as the "A" zone, the significance of the absence of the lot coverage requirement for pre-1954 lots is greatest for the larger lots in these Zones.

Footprint size is only one dimension of the "big house" problem. The other is volume, or bulk. A one-story house that covers the maximum amount of lot allowed by the setback requirements will not loom as oppressively as a house with two stories, each of which fully occupies the entire buildable part of the lot. This can be effectively controlled by giving the developer a choice of going "out" or going "up," but not both. The Proposal accomplishes this by leaving the lot coverage requirement unchanged (and still subject to grandfathering), while adding a new requirement for grandfathered lots. This requirement is called a "floor area ratio" or FAR. The FAR limits the total amount of living area in relation to the size of the lot and is applicable only to new construction or to existing houses if they are to be enlarged. If a two-story home is desired, the FAR limitation will provide a strong incentive to build "up" on smaller grandfathered lots rather than "out" to the setback limits. Many of the old "A" zone lots were platted at the "A" zone's now-outdated minimum lot width of 50'. Such lots, which also have outdated 7' side yards, could produce homes wholly out of scale with the neighborhood, absent an FAR to limit excessive sprawl. This problem will also be indirectly addressed by any new "flexible setback" regulations enacted by DPS, as explained above.

C. Building Height.

The current building height restriction in the Zoning Code for the R-60, R-90 and R-200 Zones is 35' or two and one-half stories, whichever is lower. This is the limit regardless of when the lot was recorded. This limit has not been properly and uniformly enforced by DPS, ostensibly because of uncertainty about how the building height is measured, particularly when the lot is on a slope. As a result, houses may be approved that appear, from the downhill side, to be as much as four stories tall! There is, however, a proper and conventional way to ameliorate this problem: measure building height utilizing the average finished grade around the perimeter of the building. The Proposal adopts the average grade methodology for residential properties in the R-40, R-60 and R-90 zones. This change will ensure that the building height maximum is viewed as a critical limitation to be properly and uniformly enforced. In addition, a new height limitation of 32 feet for these three residential zones is proposed to deal with the problems associated with the height interpretation in the Code.

D. Dwellings Not on Record Lots.

As explained above, developers will often characterize as merely a "renovation" a vast replacement project that turns a modest older home, on a lot not formally recorded, into a sprawling mansion dwarfing its neighbors. In one such recent case, for example, DPS issued a renovation permit even though the building owner left standing only a few 2x4's on the site, claimed to constitute a "wall." The developer completely rebuilt the house to the limits of the pre-1954 development standards that were applicable when it was first built. Under current DPS practice, the "renovation" did not trigger a DPS referral of the project to the Planning Commission, which, among other things, ensures compliance with the subdivision ordinance. Such enforcement might well have required the present-day recordation of the lot and, hence, imposed current, more stringent development standards on the project. The Proposal eliminates any incentive to evade current standards by extending the above reforms to older dwellings on lots that are not record lots. The Proposal thus recognizes that if the grandfathering standards are revised appropriately, there should be no difference in outcome between two otherwise entirely similar redevelopment projects depending on the happenstance of formal lot recordation.

IV. CONCLUSION

The Proposal will be specifically and narrowly targeted to improve County decision making in one critical area -- demolition and expansion of smaller homes in long-established neighborhoods. The Proposal sets forth long-overdue reforms that will give concerned members of established communities the tools they need to maintain their special and unique aesthetic character and open space, to eliminate disproportionate development, and to preserve moderately priced housing. At the same time, the Proposal is carefully crafted so that it does not discourage reasonable and proportionate new investment and growth in those neighborhoods to upgrade, enlarge and otherwise improve homes.

PUTTING THE BRAKES ON MANSIONIZATION PROJECTS

Many well-established residential neighborhoods in Montgomery County are in danger of losing their essential character: older, modest homes; open space; and a sense of aesthetic proportion and balance. The cause? Increasing pressure to convert such homes into sprawling mansions ill-suited to the smaller lots in these neighborhoods, facilitated by County laws plainly inadequate to prevent "mansionizations."

Arresting this trend will both preserve the special character of some of the best and oldest residential communities in the County, and help maintain the supply of modest homes that are ideal for young families and older couples with suddenly "empty-nests." To this end, a group of civic activists and citizens' associations is backing proposed legislation to reform the County's building permit review, approval and appeal process. This reform will change both the process of permit approval and the development standards applicable to these mansionization projects.

Procedures

Under current procedures neighbors are likely to learn nothing about a proposed mansionization project until after it is approved by County officials and all opportunities to challenge that approval by appeal have been lost due to the passage of time. Under the proposed legislation all this will change. Neighbors will learn of the project before plans are approved by the posting of a conspicuous sign, and will be mailed an explicit notice of their appeal rights after plans are approved.

Standards

Most mansionization projects take place on lots that, one way or another, take advantage of the development standards of forty or more years ago. These standards are so generous to development that they allow renovated homes to dwarf their unrenovated neighbors. For example, a sprawling mansion with more than 5,000 square feet of above-ground living area, not counting the attic, could be the end result of a renovation of a modest 2,500 square foot house built in 1940 on a 6,000 square foot lot. There are several ways to curb this excess; the legislative proposal does so in a way that is narrowly targeted to the affected areas and is in harmony with existing methods and standards for controlling overdevelopment.

Draft June, 1997 -

For further information contact Norman Knopf, Knopf & Brown, 202-785-8200

Conclusion

The legislative proposal gives both County officials and affected citizens the tools they need to curb excessive demolition and reconstruction of smaller homes in long-established neighborhoods. This narrowly-focused initiative will provide plenty of leeway to homeowners in older neighborhoods to renovate and large their homes according to clear, uniform guidelines that are harmonious with the scale of their own neighborhood. At the same time, developers will be discouraged from buying older, modest-size homes only to tear them down to build speculative mansions that are out of place from the day they are built. The end result -- if the law is properly enforced through official action and citizen vigilance -- will be to preserve the special and unique aesthetic character and open space of some of Montgomery County's oldest, most stable and most desirable neighborhoods.

Zoning Text Amendment No: 97019
Concerning: Lots recorded before
January 1, 1954 - R-60, R-90, R-200 zones
Draft No. & Date: 2 - 7/30/97
Introduced: August 5, 1997
Public Hearing: September 23, 1997
1:30 p.m.

Adopted:
Effective:
Ordinance No:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: Councilmembers Leggett, Subin and Krahne

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- precluding issuance of certain types of building permits without written review by the Planning Commission;
- clarifying the time for appeal to the County Board of Appeals in cases of building or use-and-occupancy permits alleged to have been issued in violation of the Zoning Ordinance;
- amending the grandfather provisions for the yard requirements in the R-60, R-90 and R-200 residential zone development standards, as applied to main building new construction or footprint alteration;
- amending the grandfather provisions for the established building line in the R-60, R-90 and R-200 residential zone development standards;
- adding a floor area ratio requirement for grandfathered lots subject to potential development or redevelopment in the R-60, R-90 and R-200 residential zones;
- conforming the redevelopment standards for existing homes not on record lots to the development standards for grandfathered lots;

- reducing the permitted building height in the R-40, R-60 and R-90 zones, clarifying limitation of the height, and amending the reference level for height measurement.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

Division A-2	"DEFINITIONS AND INTERPRETATION"
Section 59-A-2.1.	"Definitions"
DIVISION A-3	"BUILDING AND USE-AND-OCCUPANCY PERMITS; REGISTRATION OF CERTAIN USES"
Section 59-A-3.34.	"Approval by Commission"
Division 59-A-4	"COUNTY BOARD OF APPEALS"
Section 59-A-4.3.	"Filing of Appeals"
ARTICLE 59-B	"EXEMPTIONS FROM CONTROL"
Section 59-B-5.1.	"Buildable Lot Under Previous Ordinance"
Section 59-B-5.3.	"One-family Dwelling"
ARTICLE 59-C	"ZONING DISTRICTS; REGULATIONS"
Section 59-C-1.327	"Maximum Building Height (in Feet)"

EXPLANATION: ***Boldface** indicates a heading or a defined term.*
Underlining indicates text that is added to existing laws by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
** * * indicates existing law unaffected by the text amendment.*

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. Division 59-A-2 is amended as follows:

DIVISION 59-A-2. DEFINITIONS AND INTERPRETATION.

59-A-2.1. Definitions.

* * *

Average finished grade: The elevation obtained by averaging the ground surface elevation at intervals of 20 feet at the perimeter of a building.

* * *

Footprint, building: The polygon formed by the intersection of the exterior walls of a building with the ground. In residential zones, the main building footprint also includes attached and covered decks and porches.

Sec. 2. Division 59-A-3 is amended as follows:

**DIVISION 59-A-3. BUILDING AND USE-AND-OCCUPANCY PERMITS;
REGISTRATION OF CERTAIN USES.**

* * *

59-A-3.3. Application for building and use-and-occupancy permits.

* * *

59-A-3.34. [Approval] Review by Commission.

(a) [No building permit shall be issued by the director] The Director must not issue a building permit until the application [therefor] has been [approved by] submitted to the Commission or its [authorized representative] designee for review for [in] conformity with this Chapter. [Any such permit issued without commission approval is hereby declared to be invalid.]

(b) If a building permit is for new construction on a vacant lot or for work affecting the footprint, height or bulk of any existing building, including partial or total demolition, the Director must not issue the permit before receiving in writing

1 any recommendation by the Commission regarding conformity with this
2 Chapter or a statement by the Commission that it received the permit and has no
3 recommendation. If the Director does not receive a written response within 30
4 days after forwarding the application to the Commission, the Director may, in
5 the Director's discretion, issue the permit.

6 **Sec. 3. Section 59-A-4 is amended as follows:**

7 **DIVISION 59-A-4. COUNTY BOARD OF APPEALS.**

8 * * *

9 **59-A-4.3. Filing of appeals.**

10 (a) [Appeals to the board may be made by any] Any person, board, association,
11 corporation or official [allegedly] aggrieved by the grant or refusal or a building
12 or use-and occupancy permit or by any other administrative decision based [or
13 claimed to be based], in whole or in part, [upon] on this Chapter, including the
14 zoning map, may appeal that decision to the County Board of Appeals. If an
15 appellant is the applicant or an agent, assignee, lessee or other legal successor to
16 or representative of the applicant, the appellant must file the appeal within 30
17 days after the permit or decision is issued. If an appellant is any other party, the
18 appellant must file the appeal within 30 days after the later of:

- 19 (1) the mailing of notice of the permit or decision to all persons required to
20 receive notice; and
21 (2) the posting of a sign on the affected property in accordance with Section
22 8-25(g)(2).

23 * * *

24 **Sec. 4. Article 59-B is amended as follows:**

25 **ARTICLE 59-B. EXEMPTIONS FROM CONTROLS.**

39

39

1 * * *

2 **DIVISION 59-B-5. SPECIAL PROVISIONS FOR CONDITIONS PREDATING**
3 **1958.**

4 ~~**Sec. 59-B-5.1. Buildable lot under previous ordinance.**~~

5 Any lot that was legally recorded by deed or subdivision plat before June 1, 1958, and
6 that was a buildable lot under the law in effect immediately before June 1, 1958, is a
7 buildable lot for building a one-family dwelling only, even though the lot may have less
8 than the minimum area for any residential zone. Any such lot may be developed under
9 the zoning development standards in effect when the lot was recorded, except that:

- 10 (a) a lot recorded before March 16, 1928, in the original Maryland-Washington
11 Metropolitan District must meet the development standards in the 1928 Zoning
12 Ordinance;
- 13 (b) any new one-family dwelling on a lot legally recorded by deed or subdivision
14 plat before June 1, 1958, in the Upper Montgomery County Planning District
15 must comply with the standards set forth in Section 59-B-5.3(b); [and]
- 16 (c) the maximum building height for any building or structure must comply with
17 the current standard of the zone in which the lot is now classified[.];
- 18 (d) for any lot classified in the R-60, R-90, or R-200 zone that was legally recorded
19 by deed or subdivision plat before January 1, 1954, the established building line
20 setback must conform to the established building line standards for the zone in
21 which the lot is classified when construction begins, but any building
22 constructed before (effective date), that otherwise does not violate this Chapter
23 and that has the front yard setback applicable to that building when it was
24 constructed is not nonconforming because of any failure to comply with
25 otherwise applicable established building line standards if any enlargement of

the building footprint complies with all applicable established building line standards when construction begins;

- (e) (1) for any lot classified in the R-60, R-90 or R-200 zone that was legally recorded by deed or subdivision plat before January 1, 1954, the maximum floor area ratio is:

<u>Net Lot Area</u> <u>(Square Feet)</u>	<u>Maximum</u> <u>Floor Area</u> <u>Ratio</u>
<u>under 6,000</u>	<u>.50</u>
<u>6,000 - 8,999</u>	<u>.375</u>
<u>9,000 - 13,999</u>	<u>.325</u>
<u>14,000 - 17,999</u>	<u>.30</u>
<u>18,000 or more</u>	<u>.275</u>

- (2) However, the floor area permitted within a specified range of net lot area must not be less than the maximum floor area permitted in the next smaller range of net lot area.

- (3) Any main and accessory building constructed before (effective date), that otherwise does not violate this Chapter, is not nonconforming because of any failure to comply with the maximum floor area ratio if the footprint, height or bulk of any building is not increased; and

- (f) for any lot classified in the R-60, R-90 or R-200 zone that was legally recorded by deed or subdivision plat before January 1, 1954, any new construction of a main building or alteration of the footprint of an existing main building on or after (effective date), must comply with all applicable yard requirements for the

zone in which the lot is classified when construction begins and with any more stringent side or rear yard requirements otherwise applicable to any main building with more than 2 stores or higher than 24 feet.

59-B-5.3. One-family dwelling.

(a) Dwelling on record lot. Any one-family dwelling in a residential zone or agricultural zone that was built on a lot legally recorded by deed or subdivision plat before June 1, 1958, is not a nonconforming building. The dwelling may be altered, renovated, or enlarged, or replaced by a new dwelling, under the zoning development standards in effect when the lot was recorded, except that:

[(a)]

(1) a lot recorded before March 16, 1928, in the original Maryland-Washington Metropolitan District, must meet the development standards in the 1928 Zoning Ordinance;

[(b)]

(2) one-family dwellings and accessory structures on a lot legally recorded by deed or subdivision plan before June 1, 1958, in the Upper Montgomery County Planning District must comply with the setback, yard, and area coverage standards applicable to the lot in the 1956 Zoning Ordinance for the Upper Montgomery Planning District; [and]

[(c)]

(3) the maximum building height in effect when the building is altered, renovated, or enlarged, applies to the building[.];

(4) for any lot classified in the R-60, R-90, or R-200 zone that was legally recorded by deed or subdivision plat before January 1, 1954, the established building line

setback must conform to the established building line standards for the zone in which the lot is classified when construction begins, but any building constructed before (effective date), that otherwise does not violate this Chapter and that has the front yard setback applicable to that building when it was constructed is not nonconforming because of any failure to comply with any applicable established building line standards if any enlargement of the building footprint complies with all applicable established building line standards when construction begins;

- (5) (A) for any lot classified in the R-60, R-90 or R-200 zone that was legally recorded by deed or subdivision plat before January 1, 1954, the maximum floor area ratio, is:

<u>Net Lot Area</u> <u>(Square Feet)</u>	<u>Maximum</u> <u>Floor Area</u> <u>Ratio</u>
<u>under 6,000</u>	<u>.50</u>
<u>6,000 - 8,999</u>	<u>.375</u>
<u>9,000 - 13,999</u>	<u>.325</u>
<u>14,000 - 17,999</u>	<u>.30</u>
<u>18,000 or more</u>	<u>.275</u>

- (B) However, any main or accessory building constructed before (effective date), that otherwise does not violate this Chapter is not nonconforming because of any failure to comply with the maximum floor area ratio if the footprint, height or bulk of any building is not increased; and
- (6) for any lot classified in the R-60, R-90 or R-200 zone that was legally recorded by deed or subdivision plat before January 1, 1954, any new construction of a

main building or alteration of the footprint of an existing main building on or after (effective date), must comply with all applicable yard requirements for the zone in which the lot is classified when construction begins and with any more stringent side or rear yard requirements otherwise applicable to any main building with more than 2 stores or higher than 24 feet.

(b) Dwelling not on record lot. Any one-family dwelling built before (effective date), in accordance with all applicable development standards when it was constructed on a lot created but not legally recorded by deed or subdivision plat before January 1, 1954, is not a nonconforming building. Subject to Chapter 50, the dwelling may be altered, renovated, or enlarged, or replaced by a new dwelling, under the zoning development standards in effect when the dwelling was first constructed except that:

(1) the maximum building height in effect when the dwelling is altered, renovated or enlarged, applies to the dwelling;

(2) for any dwelling in the R-60, R-90 or R-200 zone, an established building line setback must conform to the established building line standards for the zone in which the dwelling is located when construction begins, but any building constructed before (effective date), that otherwise does not violate this Chapter and that has the front yard setback applicable to the building when it was constructed is not nonconforming because of any failure to comply with any applicable established building line standards if any enlargement of the building footprint complies with all applicable established building line standards when construction begins;

(3) (A) for any lot classified in the R-60, R-90 or R-200 zones, the maximum floor area ratio is:

1

<u>Net Lot Area</u> <u>(Square Feet)</u>	<u>Maximum</u> <u>Floor Area</u> <u>Ratio</u>
<u>under 6,000</u>	<u>.50</u>
<u>6,000 - 8,999</u>	<u>.375</u>
<u>9,000 - 13,999</u>	<u>.325</u>
<u>14,000 - 17,999</u>	<u>.30</u>
<u>18,000 or more</u>	<u>.275</u>

(B) However, the floor area permitted within a specified range of net lot area must not be less than the maximum floor area permitted in the next smaller range of net lot area.

(C) Any main and accessory building constructed before (effective date), that otherwise does not violate this Chapter is not nonconforming because of any failure to comply with the maximum floor area ratio if the footprint, height or bulk of the building is not increased; and

(4) for any dwelling located in the R-60, R-90 or R-200 zone, any new construction of a main building or alteration of the footprint of an existing main building on or after (effective date), must comply with all applicable yard requirements for the zone in which the dwelling is located when construction begins and with any more stringent side or rear yard requirements otherwise applicable to any main building with more than 2 stores or higher than 24 feet.

Sec. 5 Article 59-C is amended as follows:

ARTICLE 59-C. ZONING DISTRICTS; REGULATIONS.

DIVISION 59-C-1. RESIDENTIAL ZONES, ONE-FAMILY.

40 (45)

(18)

1 * * *

2 **59-C-1.3 Standard development.**

3 * * *

4 **59-C-1.32. Development standards.**

5 * * *

	RE-2 ¹	RE-2C ¹	RE-1 ¹	R-200	R-150 ³	R-90	R-60	R-40 ²	R-4 plex	RMH 200
59-C-1.327. Maximum building Height (in feet).										
Except for agricultural buildings, and except as provided in division 59-B-1 the maximum height of any building shall be as follows:										
	RE-2 ¹	RE-2C ¹	RE-1 ¹	R-200	R-150 ³	R-90	R-60	R-40 ²	R-4 plex	RMH 200
For any building in these zones:	50	50	50	50	50					50
For a main building in these zones:									35	
For a main building in the zones indicated thus (*):										
The height shall not exceed <u>32</u> [35] feet except as follows:										
(a) The height must not exceed the lesser of (i) 2 1/2 stories ⁵ or (ii) <u>32</u> [35] feet above the average finished grade, if other lots on the same side of the street and in the same block are occupied by buildings with a building height the same or less than this requirement. ⁶										
(b) The height may be increased to either 3 stories or 40 feet if approved by the planning board through the site plan approval procedures of division 59-D-3.						*	*	*		
For an accessory building in these zones:									25	
For an accessory building in these zones, which shall not exceed 2 stories, the height from existing grade shall not exceed:						25	25	25		

6 * * *

1 _____
2 ⁶ However, any main building lawfully constructed before (effective date), with a height
3 in compliance with the standards and method of measurement in effect when it was
4 constructed may be altered, renovated, enlarged, or reconstructed with a maximum
5 building height no higher than the greater of (A) the height allowed under the applicable
6 standards and method of measurement when construction begins, or (B) the actual height
7 of the building, lawful when constructed, immediately before alteration, renovation,
8 enlargement, or reconstruction. For any building covered by this paragraph, Division 59-
9 G-4 does not apply to the height of the main building.
10

11 **Sec. 6. Effective date.** This ordinance becomes effective 20 days after the
12 date of Council adoption.

13 This is a correct copy of Council action.
14

15 _____
16 Mary A. Edgar, CMC

17 Secretary of the Council

* * *

DIVISION 59-B-5. SPECIAL PROVISIONS FOR CONDITIONS PREDATING 1958.

Sec. 59-B-5.1. Buildable lot under previous ordinance.

Any lot that was legally recorded by deed or subdivision plat before June 1, 1958, and that was a buildable lot under the law in effect immediately before June 1, 1958, is a buildable lot for building a one-family dwelling only, even though the lot may have less than the minimum area for any residential zone. Any such lot may be developed under the zoning development standards in effect when the lot was recorded, except that:

- (a) a lot recorded before March 16, 1928, in the original Maryland-Washington Metropolitan District must meet the development standards in the 1928 Zoning Ordinance;
- (b) any new one-family dwelling on a lot legally recorded by deed or subdivision plat before June 1, 1958, in the Upper Montgomery County Planning District must comply with the standards set forth in Section 59-B-5.3(b); [and]
- (c) the maximum building height for any building or structure must comply with the current standard of the zone in which the lot is now classified[.];
- (d) for any lot classified in the R-60, R-90, or R-200 zone that was legally recorded by deed or subdivision plat before January 1, 1954, the established building line setback must conform to the established building line standards for the zone in which the lot is classified when construction begins, but any building constructed before (effective date), that otherwise does not violate this Chapter and that has the front yard setback applicable to that building when it was constructed is not nonconforming because of any failure to comply with otherwise applicable established building line standards if any enlargement of

6 (45)

(45)

1 the building footprint complies with all applicable established building line
 2 standards when construction begins;

3 (e) (1) for any lot classified in the R-60, R-90 or R-200 zone that was
 4 legally recorded by deed or subdivision plat before January 1, 1954,
 5 the maximum floor area ratio is:

<u>Net Lot Area</u>	<u>Maximum</u>
<u>(Square Feet)</u>	<u>Floor Area</u>
	<u>Ratio</u>
<u>under 6,000</u>	<u>.50</u>
<u>6,000 - 8,999</u>	<u>.375</u>
<u>9,000 - 13,999</u>	<u>.325</u>
<u>14,000 - 17,999</u>	<u>.30</u>
<u>18,000 or more</u>	<u>.275</u>

6 (2) However, the floor area permitted within a specified range of
 7 net lot area must not be less than the maximum floor area permitted in
 8 the next smaller range of net lot area.

9 (3) Any main and accessory building constructed before (effective
 10 date), that otherwise does not violate this Chapter, is not
 11 nonconforming because of any failure to comply with the maximum
 12 floor area ratio if the footprint, height or bulk of any building is not
 13 increased; and

14 (f) for any lot classified in the R-60, R-90 or R-200 zone that was legally recorded
 15 by deed or subdivision plat before January 1, 1954, any new construction of a
 16 main building or alteration of the footprint of an existing main building on or
 17 after (effective date), must comply with all applicable yard requirements for the

zone in which the lot is classified when construction begins and with any more stringent side or rear yard requirements otherwise applicable to any main building with more than 2 stores or higher than 24 feet.

* * *

59-B-5.3. One-family dwelling.

(a) Dwelling on record lot. Any one-family dwelling in a residential zone or agricultural zone that was built on a lot legally recorded by deed or subdivision plat before June 1, 1958, is not a nonconforming building. The dwelling may be altered, renovated, or enlarged, or replaced by a new dwelling, under the zoning development standards in effect when the lot was recorded, except that:

[(a)]

(1) a lot recorded before March 16, 1928, in the original Maryland-Washington Metropolitan District, must meet the development standards in the 1928 Zoning Ordinance;

[(b)]

(2) one-family dwellings and accessory structures on a lot legally recorded by deed or subdivision plan before June 1, 1958, in the Upper Montgomery County Planning District must comply with the setback, yard, and area coverage standards applicable to the lot in the 1956 Zoning Ordinance for the Upper Montgomery Planning District; [and]

[(c)]

(3) the maximum building height in effect when the building is altered, renovated, or enlarged, applies to the building[.];

(4) for any lot classified in the R-60, R-90, or R-200 zone that was legally recorded by deed or subdivision plat before January 1, 1954, the established building line

1 setback must conform to the established building line standards for the zone in
 2 which the lot is classified when construction begins, but any building
 3 constructed before (effective date), that otherwise does not violate this Chapter
 4 and that has the front yard setback applicable to that building when it was
 5 constructed is not nonconforming because of any failure to comply with any
 6 applicable established building line standards if any enlargement of the building
 7 footprint complies with all applicable established building line standards when
 8 construction begins;

- 9 (5) (A) for any lot classified in the R-60, R-90 or R-200 zone that was legally
 10 recorded by deed or subdivision plat before January 1, 1954, the maximum floor
 11 area ratio, is:

<u>Net Lot Area</u>	<u>Maximum</u>
<u>(Square Feet)</u>	<u>Floor Area</u>
	<u>Ratio</u>
<u>under 6,000</u>	<u>.50</u>
<u>6,000 - 8,999</u>	<u>.375</u>
<u>9,000 - 13,999</u>	<u>.325</u>
<u>14,000 - 17,999</u>	<u>.30</u>
<u>18,000 or more</u>	<u>.275</u>

12 (B) However, any main or accessory building constructed before (effective date),
 13 that otherwise does not violate this Chapter is not nonconforming because of any
 14 failure to comply with the maximum floor area ratio if the footprint, height or
 15 bulk of any building is not increased; and

- 16 (6) for any lot classified in the R-60, R-90 or R-200 zone that was legally recorded
 17 by deed or subdivision plat before January 1, 1954, any new construction of a

main building or alteration of the footprint of an existing main building on or after (effective date), must comply with all applicable yard requirements for the zone in which the lot is classified when construction begins and with any more stringent side or rear yard requirements otherwise applicable to any main building with more than 2 stores or higher than 24 feet.

(b) Dwelling not on record lot. Any one-family dwelling built before (effective date), in accordance with all applicable development standards when it was constructed on a lot created but not legally recorded by deed or subdivision plat before January 1, 1954, is not a nonconforming building. Subject to Chapter 50, the dwelling may be altered, renovated, or enlarged, or replaced by a new dwelling, under the zoning development standards in effect when the dwelling was first constructed except that:

- (1) the maximum building height in effect when the dwelling is altered, renovated or enlarged, applies to the dwelling;
- (2) for any dwelling in the R-60, R-90 or R-200 zone, an established building line setback must conform to the established building line standards for the zone in which the dwelling is located when construction begins, but any building constructed before (effective date), that otherwise does not violate this Chapter and that has the front yard setback applicable to the building when it was constructed is not nonconforming because of any failure to comply with any applicable established building line standards if any enlargement of the building footprint complies with all applicable established building line standards when construction begins;
- (3) (A) for any lot classified in the R-60, R-90 or R-200 zones, the maximum floor area ratio is:

1

<u>Net Lot Area</u> <u>(Square Feet)</u>	<u>Maximum</u> <u>Floor Area</u> <u>Ratio</u>
<u>under 6,000</u>	<u>.50</u>
<u>6,000 - 8,999</u>	<u>.375</u>
<u>9,000 - 13,999</u>	<u>.325</u>
<u>14,000 - 17,999</u>	<u>.30</u>
<u>18,000 or more</u>	<u>.275</u>

(B) However, the floor area permitted within a specified range of net lot area must not be less than the maximum floor area permitted in the next smaller range of net lot area.

(C) Any main and accessory building constructed before (effective date), that otherwise does not violate this Chapter is not nonconforming because of any failure to comply with the maximum floor area ratio if the footprint, height or bulk of the building is not increased; and

(4) for any dwelling located in the R-60, R-90 or R-200 zone, any new construction of a main building or alteration of the footprint of an existing main building on or after (effective date), must comply with all applicable yard requirements for the zone in which the dwelling is located when construction begins and with any more stringent side or rear yard requirements otherwise applicable to any main building with more than 2 stores or higher than 24 feet.

Sec. 5 Article 59-C is amended as follows:

ARTICLE 59-C. ZONING DISTRICTS; REGULATIONS.

DIVISION 59-C-1. RESIDENTIAL ZONES, ONE-FAMILY.

1 * * *

2 **59-C-1.3 Standard development.**

3 * * *

4 **59-C-1.32. Development standards.**

5 * * *

	RE-2 ¹	RE-2C ¹	RE-1 ¹	R-200	R-150 ³	R-90	R-60	R-40 ²	R-4 plex	RMH 200
59-C-1.327. Maximum building Height (in feet).										
Except for agricultural buildings, and except as provided in division 59-B-1 the maximum height of any building shall be as follows:										
	RE-2 ¹	RE-2C ¹	RE-1 ¹	R-200	R-150 ³	R-90	R-60	R-40 ²	R-4 plex	RMH 200
For any building in these zones:	50	50	50	50	50					50
For a main building in these zones:									35	
For a main building in the zones indicated thus (*):										
The height shall not exceed <u>32</u> [35] feet except as follows:										
(a) The height must not exceed the lesser of (i) 2 1/2 stories ⁵ or (ii) <u>32</u> [35] feet above the average finished grade, if other lots on the same side of the street and in the same block are occupied by buildings with a building height the same or less than this requirement. ⁶										
(b) The height may be increased to either 3 stories or 40 feet if approved by the planning board through the site plan approval procedures of division 59-D-3.						*	*	*		
For an accessory building in these zones:									25	
For an accessory building in these zones, which shall not exceed 2 stories, the height from existing grade shall not exceed:						25	25	25		

6 * * *

1 _____
2 ⁶ However, any main building lawfully constructed before (effective date), with a height
3 in compliance with the standards and method of measurement in effect when it was
4 constructed may be altered, renovated, enlarged, or reconstructed with a maximum
5 building height no higher than the greater of (A) the height allowed under the applicable
6 standards and method of measurement when construction begins, or (B) the actual height
7 of the building, lawful when constructed, immediately before alteration, renovation,
8 enlargement, or reconstruction. For any building covered by this paragraph, Division 59-
9 G-4 does not apply to the height of the main building.
10

11 **Sec. 6. Effective date.** This ordinance becomes effective 20 days after the
12 date of Council adoption.

13 This is a correct copy of Council action.
14

15 _____
16 Mary A. Edgar, CMC
17 Secretary of the Council


12 (55)

(19)

MEMORANDUM

June 23, 1998

TO: Planning, Housing, and Economic Development (PHED) Committee

FROM: Ralph D. Wilson, Senior Legislative Analyst 

SUBJECT: Worksession - Report of the Working Group on the "mansionization" legislation. (ZTA 97019 and Bill 33-97)

Introduction

The Working Group report on the "mansionization" legislation was recently presented to the Council. The report was referred by the Council to the PHED Committee for comments and recommendations. The working group members have been invited to attend and participate in the worksession discussion. At the request of the working group, the Council asked Planning Board Staff to prepare design studies, illustrating typical existing R-60 and R-90 neighborhoods, that would test different options on height, bulk, and footprint for sample lots. It was the position of the working group that such studies could better illustrate, for the Council and the general public, implications of alternative approaches to resolving certain residential development problems. Planning Board Staff will be prepared to present computer modeling of "typical" residential settings at the worksession.

Report Background

At the conclusion of the October 9, 1997 public hearing on ZTA 97019 and Bill 33-97, I was asked to chair a working group in an effort to reach consensus on the major issues raised by the legislation. From an analysis of the public hearing testimony, the issues where the greatest differences existed included building permit review and permit notice, lot coverage, setbacks, height, floor area ratios, and nonconforming buildings. The working group met regularly and was successful in reaching consensus in several important areas and on approaches for addressing those areas where consensus could not be reached.

During the course of the study, the working group did a careful comparison of pre-1954 and post-1954 development standards for the one-family residential zones and of the building sizes that could be constructed under these standards. Information from several Maryland Counties and other jurisdictions around the Country relating to the building height, bulk, and setback issue was collected and reviewed. The general location of pre-1954, R-60 and R-90 lots was identified to determine the potential scope of the issue. County regulations and interpretations related to building coverage and the issuance of demolition and construction permits were evaluated. In arriving at its recommendations, the working group discussed and evaluated all relevant issues related to the replacement and expansion of homes on pre-1954 lots.

Report Recommendations

Staff suggests that the Committee approach the legislation by reviewing the following recommendations of the working group:

1. **Permit review.** There was agreement that the building permit review process should conform to the DPS current practice of referring only building permits for new construction to the Planning Board. Since this recommendation is not in strict conformity with State law that appears to require all building permits to be referred to the Planning Board, the working group recommends that the General Assembly be requested to amend the State law to reflect the current DPS practice of referring to the Planning Board only those permits for new construction. The working group also believes it advisable that the current provision in the Zoning Ordinance that invalidates building permits not approved by the Planning Board be deleted. The working group did not support requiring a written recommendation to be made by the Planning Board on building permits for new construction or expansions that increase the height or footprint of an existing building. The group's concern was that a written recommendation would significantly increase the Planning Board's workload, is duplicative of DPS responsibilities, and raises legal questions if the Planning Board and DPS disagree on the issuance of a permit.
2. **Notice.** There was agreement that: a) notice should be given of the release of a building permit for new construction or for any other construction that requires a building permit by posting the building permit in a conspicuous location on the property; b) specific posting requirements should be established by Executive Regulation; and c) posting should occur within 3 days after the building permit is released to the applicant. This agreement would extend the current notice provision for all building permits to include the requirement that the property be posted in a conspicuous location within 3 days of the release of the building permit. The size, placement, and general requirements for posting, including special posting requirements for new subdivisions and exceptions for interior alterations, are important elements that should be established by Executive Regulation and not by legislation. There was no consensus by the working group for requiring the applicant for a building permit to provide written notice to property owners. The posting of the property was considered reasonable notice. The working group made a distinction between written notice for the

issuance of a non-discretionary building permit and written notice for the grant of a special exception or a zoning change, which involve a quasi-judicial process.

3. **Appeal period.** There was agreement that the 30-day appeal period should run from the date the building permit is released to the applicant by DPS and not from the day the property is posted. It is the building permit that is subject to appeal, not the posting of the property.
4. **Building coverage.** There was agreement that the current (post-1954) building coverage limits should apply to pre-1954 improved and unimproved lots based on the zone classification of the lot, and that a definition for the term "building coverage" should be added in the Zoning Ordinance. The building coverage is 35% in the R-60 zone, 30% in the R-90 zone, and 25% in the R-200 zone. The working group agreement would establish some construction limits beyond those that now exist for pre-1954 lots, but not to an extent that reasonable new construction could not take place. Applying the 35% coverage limit to a typical pre-1954 lot of 5,000 square feet, zoned R-60, allows a two-and-a-half-story structure with 4,550 square feet of floor space to be constructed. The pre-1954 standards would allow a structure with 5,460 square feet of floor area on the same sized lot. To require pre-1954 lots to comply with current setback standards in conjunction with the current building coverage standard could limit reasonable improvements from taking place on lots that are irregularly shaped or are significantly smaller than 6,000 square feet. Applying the setback standards in addition to the building coverage standards to pre-1954 lots zoned R-60 would result in greater separation between structures on adjoining lots, but not necessarily result in a smaller building being permitted. Increased building separation through incremental setbacks for additional building height above a certain base level is discussed later in the report.

New construction as used by the working group includes the construction of a new building and the replacement of an existing building that is totally demolished. Also, it was clarified that under current zoning laws, all residential lots in the R-60, R-90, R-150, and R-200 zones are subject to current Established Building Line (EBL) requirements, and no further revision is required to achieve the objective of the legislation concerning the Established Building Line. The group recommends that the term "building coverage", but not the term "building footprint", be defined in the Zoning Ordinance. Some working group members did not believe that uncovered decks and porches should count against the building coverage standard, as now is done by DPS interpretation. Two building coverage options that deal with the issues raised by the group are suggested for consideration:

- Option 1. Building Coverage. The area of a lot that is occupied by the main and accessory buildings, including decks and porches, whether covered or uncovered, and steps.
- Option 2. Building coverage. The area of a lot that is occupied by the main and accessory buildings, including covered decks and porches, and steps.

5. **Existing structures.** There was agreement that existing structures not meeting newly established standards should be allowed to rebuild fully in the event of a disaster, but that any expansion of an existing structure should meet all requirements that are in effect when the expansion occurs. There were no objections to a grandfather provision that would exempt existing structures from any newly imposed limitations. The issue raised by the proposed legislation is how to treat a grandfathered structure on a pre-1954 lot that is damaged or destroyed by a natural disaster or if the building footprint is affected by new construction. The working group believes that it would be reasonable and consistent with past policy to allow buildings destroyed by a natural disaster to be reconstructed fully, but to require enlargements to comply with all requirements that are in effect when the expansion occurs.

Issues for further study

The working group believes that the height and floor area ratio issues are related and should be the subject of further study before any changes to current laws are made. The working group recommends that the Council consider assigning DPS and the Planning Board the task of studying these issues for a determination of which measures or combination of measures could be considered without unreasonably restricting new residential construction or expansion opportunities. Any change in law affecting these standards would have to apply uniformly by zone and not just to pre-1954 lots. The solutions used in other jurisdictions could serve as a useful framework for Montgomery County.

1. **Height.** There was no agreement to lower the height limit from 35 feet to 32 feet or for measuring the building height from the average finished grade at intervals around the perimeter of the house. After a thorough review of the height issue and an analysis done by DPS and Planning Board staff of several residential construction projects on pre-1954 lots, the working group recommends that any future height study consider:

- *Eliminating stories as a measure of height.* This is an idea that has been promoted for years by DPS. The Department believes that enforcement would be improved if all building height measurements were done simply in terms of feet.
- *Measuring height in feet from the average grade around the house and not from a terrace or approved street grade.* The average finished grade method of measurement was seen as potentially useful for avoiding excess height where re-grading might occur. The proposed legislation defines the average finished grade as the elevation obtained by averaging the ground surface elevation at intervals of 20 feet at the perimeter of a building. Under current methodology the 35 ft./ 2 1/2 story height is determined by measuring only from the front of the structure. The concern has been that this does not take into account the true height of the house when the lot slopes to the rear or front. The working group recommends that the method of measuring building height be deferred for further study in conjunction with the study of height definitions and floor area ratios.

- *Retaining current method of measuring to the top of a flat roof and to the mid-peak for a pitched roof.* Some members of the working group believe the height of a structure should be controlled by measuring from the average grade to the apex of the structure.

- ~~*Adding an incremental setback for additional height above a certain level up to the maximum height allowed for the zone.*~~ Under one approach discussed by the working group, the standard setbacks of the zone would apply up to a certain base height, and additional height up to the zone limit would be off-set by one additional foot of setback for each two feet of added height. It was left open whether the entire structure would be set back the additional distance or whether only the portion over a certain base height would have to meet the increased setback. Under such an approach, it would have to be determined where and how to measure the height at the new setback line and the point of the roof to which to measure.

2. **Floor Area Ratio.** The use of Floor Area Ratios (FAR) to prevent excess bulk was not recommended. Numerous other jurisdictions including the County in Garrett Park have applied FARs to residential construction. Those members of the working group who believe that an FAR standard should be applied further in Montgomery County, believe the standard should be applied in all single-family residential zones and not just to pre-1954 lots. However, more study is necessary before a determination is made as to what, if any, FAR standard should be implemented. By itself an FAR standard would not address concerns about buildings at maximum height being constructed at the minimum side yard setback.

As is the usual practice, ZTA 97019 and Bill 33-97 will be revised following the worksession to reflect any Committee recommendations, and then scheduled for consideration and action by the full Council.


Attachments:

1. Working Group Report
 - Zoning Text Amendment 97019 as introduced
 - Bill 33-97 as introduced
2. Comments on Working Group Report (Norm Knopf)

MEMORANDUM

March 6, 1998

TO: Councilmembers Leggett, Krahnke, and Subin

FROM: Ralph D. Wilson, Senior Legislative Analyst 

SUBJECT: **Working Group Report** - Construction of homes on lots recorded by deed or subdivision before January 1, 1954 (ZTA 97019 and Bill 33-97)

Background

At the conclusion of the October 9, 1997 public hearing on ZTA 97019 and Bill 33-97, you asked that I chair a working group in an effort to reach consensus on the issues raised by the legislation. From an analysis of the testimony, the issues where the greatest differences existed included building permit review and permit notice, lot coverage, setbacks, height, floor area ratios, and nonconforming buildings. The working group met regularly and was successful in reaching consensus in several important areas and on approaches for addressing those areas where consensus could not be reached. The working group benefited greatly from the first-hand knowledge and experience of its members and their commitment to getting the job done. I personally thank the working group members for their dedication and effort in analyzing a difficult and controversial issue.

During the course of the study, the working group did a careful comparison of pre-1954 and post-1954 development standards for the one-family residential zones and of the building sizes that could be constructed under these standards. Information from several Maryland Counties and other jurisdictions around the Country relating to the building height, bulk, and setback issue was collected and reviewed. The general location of pre-1954, R-60 and R-90 lots was identified to determine the potential scope of the issue. County regulations and interpretations related to building coverage and the issuance of demolition and construction permits were evaluated. In arriving at its recommendations, the working group discussed and evaluated all relevant issues related to the replacement and expansion of homes on pre-1954 lots.

Summary Statement

The working group supports legislation to reflect the consensus that was reached. In those areas where consensus could not be reached, there was general agreement that certain ideas have merit and should be studied further. While there was no easy consensus on the scope of the "mansionsization" issue in Montgomery County, it was apparent that "mansionsization" has become a concern in some major metropolitan areas. Some solutions to the issue may be found in the work done in other Maryland jurisdictions and elsewhere on height limits, methods of measurement, and floor area ratios. Block and computer modeling would be desirable in relation to "typical" R-60, R-90, and R-200 settings and would advance public understanding of the issue. The availability of these visual features would be helpful in evaluating the issue further. This sort of effort was not feasible in the short life of the working group. An issue raised at the public hearing in connection with the legislation has been addressed by recently issued DPS interpretation that clearly distinguish "alteration" from "new construction". Much of the initial public concern over this issue stemmed from reactions to property owners who under then current regulations tore down existing dwellings and requested permits for alteration rather than new construction. That problem has now been solved.

Points of Consensus

I am pleased to report that the working group process resulted in consensus on several important issues raised by the legislation. The group recommends that the legislation reflect these agreements:

1. **Permit review.** There was agreement that the building permit review process should conform to the DPS current practice of referring only building permits for new construction to the Planning Board. Since this recommendation is not in strict conformity with State law that appears to require all building permits to be referred to the Planning Board, the working group recommends that the General Assembly be requested to amend the State law to reflect the current DPS practice of referring to the Planning Board only those permits for new construction. The working group also believes it advisable that the current provision in the Zoning Ordinance that invalidates building permits not approved by the Planning Board be deleted. The working group did not support requiring a written recommendation to be made by the Planning Board on building permits for new construction or expansions that increase the height or footprint of an existing building. The group's concern was that a written recommendation would significantly increase the Planning Board's workload, is duplicative of DPS responsibilities, and raises legal questions if the Planning Board and DPS disagree on the issuance of a permit.
2. **Notice.** There was agreement that: a) notice should be given of the release of a building permit for new construction or for any other construction that requires a building permit by posting the building permit in a conspicuous location on the property; b) specific posting requirements should be established by Executive Regulation; and c) posting should occur

within 3 days after the building permit is released to the applicant. This agreement would extend the current notice provision for all building permits to include the requirement that the property be posted in a conspicuous location within 3 days of the release of the building permit. The size, placement, and general requirements for posting, including special posting requirements for new subdivisions and exceptions for interior alterations, are important elements that should be established by Executive Regulation and not by legislation. There was no consensus by the working group for requiring the applicant for a building permit to provide written notice to property owners. The posting of the property was considered reasonable notice. The working group made a distinction between written notice for the issuance of a non-discretionary building permit and written notice for the grant of a special exception or a zoning change, which involve a quasi-judicial process.

3. **Appeal period.** There was agreement that the 30-day appeal period should run from the date the building permit is released to the applicant by DPS and not from the day the property is posted. It is the building permit that is subject to appeal, not the posting of the property.
4. **Building coverage.** There was agreement that the current (post-1954) building coverage limits should apply to pre-1954 improved and unimproved lots based on the zone classification of the lot, and that a definition for the term "building coverage" should be added in the Zoning Ordinance. The building coverage is 35% in the R-60 zone, 30% in the R-90 zone, and 25% in the R-200 zone. The working group agreement would establish some construction limits beyond those that now exist for pre-1954 lots, but not to an extent that reasonable new construction could not take place. Applying the 35% coverage limit to a typical pre-1954 lot of 5,000 square feet, zoned R-60, allows a two-and-a-half-story structure with 4,550 square feet of floor space to be constructed. The pre-1954 standards would allow a structure with 5,460 square feet of floor area on the same sized lot. To require pre-1954 lots to comply with current setback standards in conjunction with the current building coverage standard could limit reasonable improvements from taking place on lots that are irregularly shaped or are significantly smaller than 6,000 square feet. Applying the setback standards in addition to the building coverage standards to pre-1954 lots zoned R-60 would result in greater separation between structures on adjoining lots, but not necessarily result in a smaller building being permitted. Increased building separation through incremental setbacks for additional building height above a certain base level is discussed later in the report.

New construction as used by the working group includes the construction of a new building and the replacement of an existing building that is totally demolished. Also, it was clarified that under current zoning laws, all residential lots in the R-60, R-90, R-150, and R-200 zones are subject to current Established Building Line (EBL) requirements, and no further revision is required to achieve the objective of the legislation concerning the Established Building Line. The group recommends that the term "building coverage", but not the term "building footprint", be defined in the Zoning Ordinance. Some working group members did not believe that uncovered decks and porches should count against the building coverage standard, as now is done by DPS interpretation. Two building coverage options that deal with the issues raised by the group are suggested for consideration:

- Option 1. **Building Coverage.** The area of a lot that is occupied by the main and accessory buildings, including decks and porches, whether covered or uncovered, and steps.
 - Option 2. **Building coverage.** The area of a lot that is occupied by the main and accessory buildings, including covered decks and porches, and steps.
5. **Existing structures.** There was agreement that existing structures not meeting newly established standards should be allowed to rebuild fully in the event of a disaster, but that any expansion of an existing structure should meet all requirements that are in effect when the expansion occurs. There were no objections to a grandfather provision that would exempt existing structures from any newly imposed limitations. The issue raised by the proposed legislation is how to treat a grandfathered structure on a pre-1954 lot that is damaged or destroyed by a natural disaster or if the building footprint is affected by new construction. The working group believes that it would be reasonable and consistent with past policy to allow buildings destroyed by a natural disaster to be reconstructed fully, but to require enlargements to comply with all requirements that are in effect when the expansion occurs.

Issues for further study

Within the context of the pending legislation, consensus was not reached in the following areas of concern and should not be included in the legislation. The working group believes that the height and floor area ratio issues are related and should be the subject of further study before any changes to current laws are made. The working group recommends that the Council consider assigning DPS and the Planning Board the task of studying these issues for a determination of which measures or combination of measures could be considered without unreasonably restricting new residential construction or expansion opportunities. Any change in law affecting these standards would have to apply uniformly by zone and not just to pre-1954 lots. The solutions used in other jurisdictions could serve as a useful framework for Montgomery County.

1. **Height.** There was no agreement to lower the height limit from 35 feet to 32 feet or for measuring the building height from the average finished grade at intervals around the perimeter of the house. After a thorough review of the height issue and an analysis done by DPS and Planning Board staff of several residential construction projects on pre-1954 lots, the working group recommends that any future height study consider:
 - *Eliminating stories as a measure of height.* This is an idea that has been promoted for years by DPS. The Department believes that enforcement would be improved if all building height measurements were done simply in terms of feet.
 - *Measuring height in feet from the average grade around the house and not from a*

terrace or approved street grade. The average finished grade method of measurement was seen as potentially useful for avoiding excess height where re-grading might occur. The proposed legislation defines the average finished grade as the elevation obtained by averaging the ground surface elevation at intervals of 20 feet at the perimeter of a building. Under current methodology the 35 ft./ 2 1/2 story height is determined by measuring only from the front of the structure. The concern has been that this does not take into account the true height of the house when the lot slopes to the rear or front. The working group recommends that the method of measuring building height be deferred for further study in conjunction with the study of height definitions and floor area ratios.

- *Retaining current method of measuring to the top of a flat roof and to the mid-peak for a pitched roof.* Some members of the working group believe the height of a structure should be controlled by measuring from the average grade to the apex of the structure.
 - *Adding an incremental setback for additional height above a certain level up to the maximum height allowed for the zone.* Under one approach discussed by the working group, the standard setbacks of the zone would apply up to a certain base height, and additional height up to the zone limit would be off-set by one additional foot of setback for each two feet of added height. It was left open whether the entire structure would be set back the additional distance or whether only the portion over a certain base height would have to meet the increased setback. Under such an approach, it would have to be determined where and how to measure the height at the new setback line and the point of the roof to which to measure.
2. **Floor Area Ratio.** The use of Floor Area Ratios (FAR) to prevent excess bulk was not recommended. Numerous other jurisdictions including the County in Garrett Park have applied FARs to residential construction. Those members of the working group who believe that an FAR standard should be applied further in Montgomery County, believe the standard should be applied in all single-family residential zones and not just to pre-1954 lots. However, more study is necessary before a determination is made as to what, if any, FAR standard should be implemented. By itself an FAR standard would not address concerns about buildings at maximum height being constructed at the minimum side yard setback.

Conclusion

In conclusion, the working group reiterated the desirability of design studies, illustrating typical existing R-60 and R-90 neighborhoods that would test different options on height, bulk, and footprint for sample lots. Such studies could better illustrate, for the Council and the general public, implications of alternative approaches to resolving the remaining problems. Park and Planning Staff or outside specialists could conduct such studies at the request of the Council if resources were made available.

Committee Worksession

The Planning, Housing, and Economic Development Committee worksession on ZTA 96019 and Bill 33-97 is tentatively scheduled for March 30. I will present the working group report to the Committee at that time and have asked the working group members to attend and participate in the worksession discussion. As is the usual practice, ZTA 97019 and Bill 33-97 will be revised following the worksession to reflect any Committee recommendations, and then scheduled for consideration and action by the full Council.

Attachments:

1. Working Group Membership
2. ZTA 97019 as introduced
3. Bill 33-97 as introduced

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